

DAFLCHE1

Trial

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 CHEVRON CORPORATION,

4 Plaintiff,

5 v.

11 Cv. 0691 (LAK)

6 STEVEN R. DONZIGER, et al.,

7 Defendants.

8 -----x

October 15, 2013
9:45 a.m.

10 Before:

11 HON. LEWIS A. KAPLAN

District Judge

12 APPEARANCES

13 GIBSON, DUNN & CRUTCHER LLP
14 Attorneys for Plaintiff

15 BY: RANDY M. MASTRO
16 ANDREA E. NEUMAN
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18 JEFFERSON E. BELL
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22 BY: RICHARD H. FRIEDMAN
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GOMEZ LLC
Attorneys for Defendants Hugo Camacho, Javier Piaguaje
BY: JULIO C. GOMEZ

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1 THE DEPUTY CLERK: Chevron against Donziger, et al.
2 Counsel for plaintiff, are you ready?

3 MR. MASTRO: Ready, your Honor.

4 THE COURT: Good morning.

5 THE DEPUTY CLERK: Counsel for defendant Donziger, are
6 you ready?

7 MS. FRIEDMAN: Good morning, your Honor, yes.

8 THE COURT: Good morning.

9 MS. FRIEDMAN: Your Honor, it's actually Mr. Friedman.

10 THE COURT: I'm sorry. I've made that mistake quite a
11 lot. I don't know why. What can I say. I apologize.

12 MS. FRIEDMAN: No problem.

13 THE DEPUTY CLERK: Counsel for defendants Camacho and
14 Piaguaje, are you ready?

15 MR. GOMEZ: Ready to address the Court but not for
16 trial.

17 THE COURT: All right, Mr. Gomez.

18 MR. GOMEZ: Good morning.

19 THE COURT: Good morning. Go ahead, Mr. Gomez, if you
20 have anything to say.

21 MR. GOMEZ: Well, your Honor, I requested a
22 continuance, a brief continuance, a week ago. Your Honor
23 denied it. The request was not made lightly. It was made
24 because the time was necessary, and passage of one week has not
25 changed that situation. We are simply not prepared. I am

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1 simply not prepared, your Honor, to bring this matter to trial
2 today because of the resources and the lack of assistance that
3 I have so far. I filed a motion during the past week
4 indicating an alternative request that we proceed at a more
5 rational schedule.

6 THE COURT: When did you file that?

7 MR. GOMEZ: That was filed approximately Wednesday or
8 Thursday, if I recall, your Honor. That schedule would require
9 a maximum of one witness per day to give me an opportunity as a
10 solo practitioner to defend my clients' interest, to be
11 prepared for the day in court, and to be able to provide some
12 sort of defense with some indication of dignity, your Honor.

13 Your Honor, as yet Chevron has opposed that motion.
14 Your Honor has yet to rule on it. We await a ruling on that.
15 In any event, I want the record to be absolutely clear that by
16 my indicating that I am ready I am not waiving the motion that
17 I made last week that I need more time. I just want that to be
18 clear, your Honor. Thank you.

19 THE COURT: All right. You made it clear. I will
20 deal with this more comprehensively at a subsequent time.

21 I will at this moment make this adjustment in the
22 schedule. We will not sit this Friday. I may make a further
23 adjustment.

24 You are already aware that there are several days
25 during the final week of October where I indicated previously

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1 we would not be sitting. That effectively would give you, in
2 substance, the break between the plaintiff's case and the
3 defendant's case that you asked for. I had spoken last week
4 about the possibility of sitting that week if the budget
5 situation in Washington is such that the previous commitment
6 that I have resulted in my being here rather than elsewhere.

7 I will now make this further adjustment, that the
8 three days that I indicated we would not sit in late October we
9 will not sit regardless of what happens in Washington.

10 Beyond that, I'll have a good deal more to say
11 shortly, but we are going to proceed this morning.

12 I note that with the current tally of proposed
13 witnesses by plaintiffs and defendants, your proposal would
14 require 108 trial days to try this case. Last week you stood
15 in my courtroom and said the case could be tried in three
16 weeks.

17 Okay. We will now proceed. Opening statement,
18 Mr. Mastro. Please use the lectern.

19 MR. MASTRO: Thank you, your Honor.

20 It's been a long, hard road to get here, but the
21 judgment day is at hand, and for that I and my client Chevron
22 are extremely grateful. We're here today, your Honor, to right
23 a wrong, to expose a \$19 billion fraud and extortion scheme and
24 to hold accountable those responsible for it.

25 First and foremost, your Honor, this is a RICO case.

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Opening - Mr. Mastro

1 The head of this racketeering enterprise, the cabeza, the Don,
2 is right here in this courtroom, Steven Donziger, who right
3 here from Manhattan as a U.S. lawyer has masterminded and
4 orchestrated this scheme largely out of the U.S. in collusion
5 with other U.S. lawyers, U.S. consultants, and U.S. funders, in
6 collaboration with Ecuadorian coconspirators, who conspired
7 together as an enterprise for a common purpose to engage in a
8 pattern of racketeering, committing multiple acts of wire and
9 mail fraud, extortion, bribery, obstruction of justice, witness
10 tampering, and money laundering; all with one aim -- to try to
11 pressure a deep-pocketed U.S. victim into paying them off to go
12 away.

13 Your Honor, it's a shakedown scheme, pure and simple,
14 one predicated on lies, billion dollar lies, and now it's time
15 to hold Donziger and his coconspirators accountable for those
16 lies. And we will prove them, your Honor, lie after lie.

17 Your Honor will recall the very first time I came into
18 this courtroom three and a half years ago and played for you a
19 clip from the movie Crude. It's offered as Plaintiff's Exhibit
20 No. 4. It's a clip of Steven Donziger in his own words
21 explaining what he was about to do barging into an Ecuadorian
22 judge's chambers ex parte with cameras rolling. And his words
23 that day were, This is something we would never do in the
24 United States. This is just out of bounds, both in terms of
25 judicial behavior and what lawyers would do. But Ecuador, you

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1 know, there's almost no rules here. And this is how the game
2 is played, dirty. And we'll prove at this trial that's exactly
3 how Steve Donziger played the game, dirty.

4 Over time he became obsessed with making the big score
5 at Chevron's expense because in his own words on those film
6 outtakes -- and forgive me, your Honor, some of the language
7 that I have to use today is quoting Steven Donziger -- Donziger
8 is in the business of plaintiff's law and "the business of
9 plaintiff's law is to make fucking money."

10 Donziger and his coconspirators have lied and bribed
11 and bullied and ghostwritten their way through the Ecuadorian
12 court system, ghostwriting court documents themselves, even the
13 \$19 billion judgment in their own favor. And they've used the
14 false narrative they created in Ecuador both here in the United
15 States and throughout the world like a club to try bludgeon
16 Chevron into submission.

17 As part of his self-proclaimed Chevron pressure
18 campaign, Donziger has lived by one rule, his words
19 memorialized to his cocounsel, "If you repeat a lie a thousand
20 times it becomes the truth."

21 So Donziger kept telling the same lies over and over
22 again, lying to Congress, to the SEC, to the New York attorney
23 general, to the U.S. courts, among others, about the
24 multibillion dollar damage assessment coming out of Ecuador
25 from the supposedly quote/unquote independent court expert,

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1 Richard Stalin Cabrera, that it now turns out -- and it's not
2 denied -- was secretly ghostwritten by Donziger's team itself
3 just to get Chevron investigated, colluding with Ecuadorian
4 officials to get bogus criminal charges brought against two
5 Chevron attorneys, one of whom you'll hear from as your first
6 witness in this trial, Mr. Veiga, and the other of whom had to
7 spend the last years of his life in exile, separated from his
8 homeland and his family as a result, in implementing a foreign
9 enforcement strategy laid out in Invictus to, quote, place
10 settlement pressure on Chevron by, quote, selecting
11 jurisdictions that offer a path of least resistance and allow
12 prejudgment attachments that, quote, compound the pressure
13 already placed on Chevron.

14 But the pressure applied here through lies and fraud
15 goes by another name -- it's called extortion. And that's what
16 Steve Donziger and his cronies have been trying to do to
17 Chevron, coerce a big pay day out of the company to make the
18 pain go away. But Chevron didn't give in. It stood up for its
19 tens of thousands of employees and shareholders. It refused to
20 be extorted and defrauded and that's why we're here today.

21 What I want to do in my brief time, your Honor, is set
22 the stage for what's to come in this case because so much of
23 the evidence at this trial comes out of Steve Donziger's own
24 mouth and out of the mouths of his coconspirators. And it's
25 their own words and their own documents that prove our case,

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1 shocking, smoking gun evidence of Donziger and his
2 coconspirators in their own words on film outtakes, in their
3 own notebooks, in their own private internal communications,
4 all of which they thought would never see the light of day but
5 U.S. court after court throughout this country, including here,
6 ordered them to produce, candidly confessing their crimes and
7 confirming if the truth comes out, "all of us, your attorneys,
8 might go to jail."

9 Instead of coming clean, Donziger and his
10 coconspirators doubled down, obstructing the truth from coming
11 out in the U.S. long enough to buy time to try to -- their
12 words -- cleanse the Ecuadorian court record of the Cabrera
13 fraud and fool funders into giving them the lifeline they
14 needed to keep their scheme going. And then with their scheme
15 about to unravel, they cut their boldest deal of all, pay the
16 Ecuadorian judge a \$500,000 bribe in exchange for which they
17 got to ghostwrite the judgment in their own favor.

18 Because as Steve Donziger put it, for the court in
19 Ecuador, this was all, quote, just a bunch of smoke and mirrors
20 and bull shit. We have enough to get money. And the money was
21 plenty of motivation for Steve Donziger, your Honor. He stands
22 to gain \$1.2 billion if these defendants collect on their
23 fraudulent \$19 billion Ecuadorian judgment. It's that
24 inescapable hard evidence from the defendant's own mouths and
25 files that we're going to present to your Honor at this trial,

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1 along with the testimony, live or by deposition, of at least a
2 dozen of Donziger former confederates now testifying against him:
3 U.S. cocounsel, U.S. consultant's counsel, U.S. consultants,
4 U.S. employees, U.S. funders, and even Ecuadorian
5 collaborators, all of whom have turned on Donziger and come
6 forward to acknowledge their role in this scheme and the ways
7 in which Steve Donziger lied, manipulated, and misled them.

8 Let me go through who your Honor is going to hear from
9 very briefly.

10 Former cocounsel Jeffrey Shinder, Constantine Cannon
11 firm, hired to be coordinating counsel on the 1782s. John
12 McDermott, hired to be local counsel on the Stratus 1782. When
13 Donziger stonewalled them on information about Stratus's role
14 in the production of Cabrera's report, Shinder insisted that he
15 speak directly to Stratus and after he did, when he came out of
16 that meeting, he called Steve Donziger and he told him, he said
17 one minute after he got out of that meeting he had to quit
18 because he was sickened and disgusted by what he learned and
19 Stratus had actually ghostwritten the Cabrera report. And John
20 McDermott then filed suit withdrawing, telling Steve Donziger
21 he could not put his firm's ethical and professional reputation
22 at stake by continuing to represent Steve Donziger's client.

23 And you'll also hear from Richard Kornfeld, successor
24 counsel on the 1782 for Donziger's clients. I can't tell you
25 what he's going to say. He'll be happy to tell you when he

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1 gets here why he withdrew. They have asserted a privilege
2 objection, the same ones found to be covered by waiver, and
3 we'll hear from Mr. Kornfeld when gets on the stand about why
4 he felt compelled to leave the case.

5 Stratus's counsel, Mr. Silver and Mr. Beier, by
6 deposition. Mr. Shinder will be in this courtroom,
7 Mr. McDermott by deposition. Stratus's counsel by deposition
8 will tell your Honor that Mr. Donziger and his legal team
9 leaned on him to try to prevent Stratus depositions from going
10 forward and from their document production going forward in a
11 timely way and that Mr. Silver was so outraged that he hung up
12 the phone because, in his own words, confirmed in documents, he
13 didn't want to be part of an obstruction and have to say he
14 participated in a conversation about obstruction.

15 Your Honor, the Stratus consultants themselves.
16 You'll hear from one or more of the folks at Stratus. That's
17 Doug Beltman, Ann Maest, and Josh Lipton. At least one of them
18 will be here to testify live.

19 And, your Honor, let me just explain, Mr. Beltman and
20 Ms. Maest had to admit they had ghostwritten the Cabrera
21 report. They now have come forward and sworn that they did
22 that. They've renounced that report as based on invalid
23 assumptions that Donziger gave them. And they've said that
24 they renounce their prior testimony of trying to cover it up
25 and saying things like only 5 percent of the report was written

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1 by us.

2 And your Honor will hear from Josh Lipton, the head of
3 Stratus, because Doug Beltman and Ann Maest are no longer
4 there. When Josh Lipton, the head of Stratus found out what
5 his own people had really done, when he found out that Doug
6 Beltman had lied to him about that 5 percent and that they had
7 really ghostwritten the Cabrera report, he was appalled and
8 outraged. You'll hear that from him on the stand, your Honor.

9 We're going to hear from other former consultants like
10 Mark Quarles, who Donziger got to sign an affidavit in this
11 very courthouse before Judge Sand attesting to Cabrera's
12 independence. And when Quarles found out that that wasn't
13 true, he candidly admitted in his deposition he never would
14 have done that if Steve Donziger had not pressed him to do
15 that.

16 And you'll hear live from David Russell, by deposition
17 from Dr. Charles Calmbacher, Russell -- Donziger gave him
18 unwarranted assumptions to come up with a remediation damages
19 estimate. The unwarranted assumptions got it up to 6 billion.
20 And then when Russell got on the ground and started to learn
21 the truth himself, he told Steve Donziger not to use it, it was
22 not valid, Donziger kept using it, kept using the lie to put a
23 big figure out there to pressure Chevron. And Russell sent him
24 a cease and desist letter. It was off by an order of magnitude
25 of ten or more, no longer valid, and Donziger kept using it

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1 over and over and over again even though he knew it was a lie.

2 And Dr. Charles Calmbacher, he was their expert on the
3 ground at those joint inspections, your Honor. He did reports.
4 Steve Donziger didn't want those reports to be submitted in the
5 way Dr. Charles Calmbacher had written them. So what did Steve
6 Donziger do? He pressed him to give signature pages, and then
7 the reports filed in Ecuador were not his report. His
8 signature, not his report, not his findings. Steve Donziger
9 engineered that and used the U.S. mails to do it.

10 His former employees, Andrew Woods by deposition, and
11 Laura Garr, who we expect to be here, your Honor, in this
12 courtroom, both admitting that Donziger misled them about the
13 Cabrera ghostwriting and never told them that Stratus had
14 written the report. Laura Garr was sent on a mission to
15 Ecuador when the scandal first broke, sent on a frolic and
16 detour when Donziger knew darn well that Stratus had
17 ghostwritten the report in coordination with local Ecuadorian
18 counsel. You'll hear that testimony too, misled and lied to
19 his own employees.

20 The Ecuadorian collaborators. I'll talk more about
21 former Judge Guerra a little later, your Honor. He'll be here
22 in this courtroom. And, of course, Fernando Reyes, an
23 Ecuadorian who Donziger paid to pretend to be an independent
24 expert to try to influence the court on those joint inspections
25 in the early part of this case when he was on Donziger's

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1 payroll all along. You'll see his deposition. You'll have his
2 testimony.

3 And, finally, the former funders, Joe Kohn, Chris
4 Bogart. They'll both be here in this courtroom and they will
5 both tell you the same thing, that Donziger lied to them,
6 manipulated them, never told them the truth about the Cabrera
7 ghostwriting fraud. And if they had known the truth, they
8 never would have continued to fund in Mr. Kohn's case, never
9 would have funded in Mr. Bogart's case, at a critical time when
10 the fraud was unraveling and they had to hide the truth to get
11 Burford to put money in to keep their scheme going when it was
12 on fumes.

13 And, your Honor, you're going to hear the defendant
14 say, oh, these witnesses, they were pressured to come forward,
15 they were lawsuits or threats of lawsuits, well, your Honor,
16 the contemporaneous documents tell the tale because Mr. Kohn
17 wrote to Donziger in August 2010 to say you lied to me, you
18 defrauded me. And Chris Bogart at Burford wrote to Donziger in
19 2011 to say you lied to us, you defrauded us.

20 Contemporaneous documents tell the tale. They'll be
21 coming into this courtroom and the other witnesses to tell
22 their truth to this Court. It's contemporaneously documented.

23 Your Honor, I want to cover a couple other points this
24 morning because your Honor is so familiar with the record
25 already and we will, in proving all the frauds that occurred at

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1 Ecuador at this trial, your Honor knows them -- the early
2 frauds in the joint inspection process Russell and Calmbacher
3 and Reyes will testify about; the Cabrera ghostwriting and
4 bribery fraud; the blackmailing of the Ecuadorian judge to end
5 those joint inspections, confirmed in their internal documents,
6 and appoint a single global damages expert, Cabrera, and then
7 hijacking his supposedly independent process by bribing him
8 with funds acquired from the U.S. into what they called
9 themselves our secret account and having his report
10 ghostwritten secretly word for word by U.S. consultants at
11 Stratus and elsewhere in the United States, unbeknownst to
12 Chevron and apparently even the Ecuadorian court that they and
13 Cabrera repeatedly submitted lies claiming he was independent;
14 the cleansing expert fraud, as Donziger's legal team sought to
15 obstruct the truth from coming out here about the Cabrera
16 ghostwriting, repeatedly lying to U.S. courts, U.S. Congress,
17 here in the Southern District of New York, courts, and in
18 Colorado, at the same time trying to cleanse the Ecuadorian
19 court record of the Cabrera tape by getting a U.S. consulting
20 firm, Weinberg -- and you'll see the testimony on this, your
21 Honor, from the depositions -- to coordinate filing new U.S.
22 cleansing reports based on Cabrera's report without telling
23 those experts Cabrera wasn't independent, without them having
24 any time to do independent work or visiting Ecuador and, like
25 deja vu all over again, ghostwriting some of their reports.

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1 All culminating, your Honor, in the judgment
2 ghostwriting form where Donziger's team ghostwrote the
3 \$19 billion judgment in their own favor, even though under
4 Ecuadorian law, only the judge can write the judgment and only
5 after reviewing the entire record in the case and only write it
6 himself based on the record, not anything outside the record.
7 And we'll prove that judgment ghostwriting at this trial, your
8 Honor. We'll prove it beyond any reasonable doubt.

9 We'll prove that right out of Donziger's team's own
10 files, nowhere else to be found in the record. There are many
11 documents that appear word for word, sometimes in word strings
12 of as much as 150 words in a row in that judgment. That only
13 happens one way -- they ghost wrote it.

14 Your Honor, that's more than plagiarism. It's worse
15 than plagiarism. It's a fraud on the court system and now on
16 all those enforcement courts where they're going around the
17 world peddling a judgment they ghostwrote themselves. And it's
18 the errors in those internal documents, Donziger team's own
19 internal documents, that particularly give them away, that show
20 up in the judgment word for word, error for error, like
21 fingerprints on the judgment itself, the misquoting of a case
22 and the miscitation of another case that has nothing to do with
23 trusts about the Taharto trust email, yet the misquoting of the
24 case and the miscited case show up word for word, cite for cite
25 in the judgment.

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1 The Selva Viva database, Selva Viva being the entity
2 that Donziger was president of, that database shows up, even
3 though never put into the court record, with all of the errors
4 and misspellings and punctuation and miscitations and the SV
5 denomination that has nothing to do with citing samples, shows
6 up 70 times in the judgment error for error, capitalizations,
7 punctuations, miscitations, error for error, 70 times. And the
8 complete misstatements of Australian and California law of
9 causation in the Moody's memo that somehow shows up, same
10 errors in articulating Australian law, same errors in
11 articulating California law. Your Honor, that's no accident.
12 That's ghostwriting. And that's why we'll call forensic and
13 linguistic and legal experts to confirm in every particular, to
14 which defendants have no response and no experts they could
15 even find to call to pay anything on that subject.

16 So the only remaining question, your Honor, is not
17 whether the judgment was ghostwritten, it's how it came about.
18 And we now have the answer from an insider, former judge
19 Alberto Guerra, the first judge on this case. He has come
20 forward as an insider to tell what happened. They bribed the
21 Ecuadorian judge Nicholas Zambrano 500,000 to ghostwrite the
22 judgment themselves.

23 Now, the defendants attack Guerra because he's gotten
24 money for his hard evidence, perfectly proper. He's gotten
25 living expenses to allow him and his family to be able to come

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1 here because of their safety and security, very, very grave
2 safety and security concerns. And they attack him because he's
3 admitted he's a criminal. Well, your Honor, we didn't pick
4 Judge Guerra. Donziger and his cronies picked Judge Guerra to
5 commit crimes with. And Guerra merely corroborates what the
6 hard evidence from Donziger's teams files already proves, that
7 he was on Donziger's team's payroll to ghostwrite Zambrano's
8 orders in this case throughout the case, ghostwrite them.

9 They even in their own internal documents refer to him
10 as the puppeteer whom they had to pay to move the puppet
11 Zambrano. And Guerra's account is corroborated in every
12 particular by the hard evidence he's provided that he was
13 Zambrano's ghost writer after Guerra left the bench and that he
14 participated in the ghostwriting of the judgment -- 112
15 Zambrano orders on Guerra's computer, including nine from this
16 case; shipping records to Zambrano; bank records showing direct
17 deposits from Zambrano into Guerra's account and even from
18 Selva Viva -- that's Donziger's organization -- into Guerra's
19 account because he was being paid for a period of time a
20 thousand dollars a month by the plaintiff's team, Donziger's
21 team, to ghostwrite the orders in the case; and even a memory
22 aid document, a summary of the case history, given to him to
23 help edit the judgment after they had ghostwritten it so it
24 would read more like a judicial opinion, all produced by
25 Alberto Guerra to support his account.

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1 So now Donziger says this case -- you heard it last
2 Wednesday -- boils down to whether Guerra is telling the truth
3 about the bribe or whether Nicholas Zambrano is. Well, of
4 course, that's not true. Donziger's other frauds, like the
5 Cabrera fraud, irreparably tainted the Ecuadorian proceedings
6 and we'll prove it here. Indeed, Cabrera's ghostwritten report
7 shows up all over the judgment in its damages categories, in
8 its pick count, in its causation assessment, and through the
9 cleansing experts who show up in the judgment, among others,
10 and we'll prove all that at this trial.

11 And, of course, Donziger's extortion pressure campaign
12 in the United States predicated on lies didn't rely on the
13 judgment that were lies he told and repeated over and over
14 again, hoping people would believe the lies. And the evidence
15 at this trial will prove that ghostwriting of the judgment
16 regardless, but Guerra's account of how this happened is based
17 upon the hard evidence at every turn.

18 What about Zambrano? They say he's going to come
19 here, a reluctant witness. They say he'll finally appear, but
20 apparently without producing any of their Ecuadorian documents
21 or his Ecuadorian documents that would prove up this scheme.

22 Now, I had a date with Mr. Zambrano in Lima, Peru last
23 spring, but he didn't show. And if he actually shows now, I
24 intend to give him a big New York welcome. But his bare
25 unsworn account thus far, your Honor, I can only say is

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1 ludicrous on its face. Unidentified documents supposedly left
2 on his doorstep which he says he considered in writing the
3 judgment but never made part of the court record? Work he
4 claims he did during the first four months of these
5 proceedings, his tenure, reviewing the record, preparing the
6 judgment, even though that's illegal under Ecuadorian law, and
7 even though the evidentiary record had not been closed. He had
8 no reason to believe, unless he's a soothsayer, that the judge
9 who succeeded him would be recused from the case on a motion
10 that had yet to be made.

11 And his supposed speed reading and speed writing
12 abilities, reviewing a 236,000 page record and writing a
13 188-page, single-spaced judgment that a renowned expert in the
14 field will testify would have been impossible for Zambrano
15 humanly to have accomplished during his two short tenures on
16 the case before the judgment issued. And even by his account,
17 we will prove that what he claims to have done was in direct
18 violation of several basic tenets of Ecuadorian law.

19 Moreover, if Zambrano shows here, we'll prove he was
20 removed from the bench even in corrupt Ecuador shortly after
21 issuing this judgment for "malice and inexcusable error." In
22 fact, that disciplinary charge hung over his head like a sword
23 of Damocles while he was working on this case knowing full well
24 how the Correa government wanted it to turn out. What did
25 Zambrano do? It's telling, your Honor. He released on his own

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1 recognizance a Colombian FARC drug dealer armed to the teeth
2 who was caught fleeing the scene of a 500-kilo cocaine bust and
3 once released was never to be seen from again.

4 But now the defendant says Zambrano will come here to
5 testify. And perhaps that's because since the time he stood me
6 up in Lima, Donziger's friends in the Correa government got
7 Zambrano a legal associate job with Petroecuador's new oil
8 drilling joint venture with Venezuela and China, rife with
9 ironies, your Honor, that pays almost three times what the
10 position is listed for in the company's listed salary index.

11 In any event, who's to be blamed here? Guerra, who
12 admits his crimes and corroborates his account with hard
13 evidence, or Zambrano, the elusive witness and disgraced former
14 judge who's now on the ROE's payroll? Your Honor will have the
15 opportunity to judge that for himself.

16 And when the defendants try to tell you none of this
17 matters because the Ecuadorian judgment was affirmed on appeal,
18 sounds a little bit like collateral estoppel they say they're
19 not arguing, your Honor. Your Honor will recall the Ecuadorian
20 appellate opinion said, quote, this is the clarification order,
21 Plaintiff's Exhibit 431. It states out of these accusations
22 preserving the parties' right to continue the course of the
23 actions that have been filed in the United States. In fact, in
24 Plaintiff's Exhibit 430, the original Ecuadorian appellate
25 decision, refers specifically to the RICO action here. And the

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1 court there having no confidence -- that you should decide the
2 foreign RICO.

3 Now, your Honor, before I conclude, I wanted to
4 address briefly Chevron's separate claim for fraud or should I
5 say many frauds. First there's Donziger's fraud on his former
6 U.S. funders, Joe Kohn and Chris Bogart of Periphery. Both
7 will testify live at this trial that Donziger lied to them and
8 defrauded them into providing the funding necessary to keep
9 this scheme going that they never would have funded had they
10 known the truth. Donziger defrauded each of them in funding
11 his scheme so that he could continue to harm Chevron.

12 Donziger's fraud is also attributable to his
13 codefendants Camacho and Piaguaje, who under New York law bear
14 legal responsibility for any acts that Donziger took as their
15 agent or that they ratified when they re-upped their powers of
16 attorney in late 2010, regardless of whether they personally
17 participated in them. Although make no mistake, your Honor,
18 they not only turned a blind eye to their agent's misconduct,
19 they have also continued to front in lawsuits filed here in New
20 York and around the world as Donziger and his cronies seek to
21 enforce their fraudulent \$19 billion judgment.

22 So Donziger's frauds to Chevron's detriment on U.S.
23 funders, on U.S. regulators, on the U.S. Congress, and other
24 courts around the world will also be proven at this trial, and
25 all of the defendants are liable for it.

DAFLCHE1

Opening - Mr. Mastro

1 In closing, your Honor, let me touch briefly upon what
2 we expect to be the defendant's case because so much of what
3 Chevron alleges these defendants did they have not and they
4 cannot dispute. So what can we expect defendants to say?

5 Donziger will claim his own damning admissions are
6 being taken out of context, although what he'll claim is
7 context is often the rambling self-serving unsubstantiated
8 hearsay that has no place in this trial. And no one took
9 Donziger out of context when he went up to Congress himself in
10 2009 and testified "the best and most recent independent
11 estimate" comes from "the court, the expert appointed by the
12 court, Richard Cabrera."

13 Donziger will also claim he's just acting as a lawyer
14 in a hard fought litigation against a well-heeled adversary
15 doing what he had to do. He'll say the ends justify the means.
16 He even wrote about this approach in his own notebook. He
17 called it "a new paradigm, not only a case, but also how to do
18 a case. Chevron wanting to settle, billions of dollars on the
19 table, a movie, a possible book. I cannot keep up with it."

20 But this isn't a new paradigm for how to do a case,
21 your Honor. It's a familiar story of racketeers targeting a
22 deep pocket for a big score. Donziger sees billions of dollars
23 on the table. He's become all about the money. This is no new
24 paradigm. It's fraud and extortion.

25 So if Donziger gets away with it here, targeting this

DAFLCHE1

Opening - Mr. Mastro

1 U.S. company in a foreign country susceptible to corruption and
2 then corrupting the process to try to force a payoff, who will
3 be the next U.S. victim of this "new paradigm"? It will be
4 open season on U.S. corporations in corrupt foreign
5 jurisdictions and that's what's at stake here. It's time to
6 put a stop to this new paradigm right here and now and call it
7 what it is, a crime.

8 And at the end of this trial, we'll come back to your
9 Honor and ask for RICO liability findings against Donziger and
10 fraud liability findings against all of these defendants and
11 we'll ask for equitable relief, your Honor, that prevents them
12 from ever profiting from their crimes because Donziger and his
13 codefendants shouldn't profit one penny from this fraudulent
14 \$19 billion Ecuadorian judgment they got through fraud and
15 bribery and blackmail and then ghostwrote for themselves.
16 Maybe they thought they could get away with this in Ecuador
17 because, as Donziger said, it's dirty there. But in his own
18 words, "This is something you would never do in the United
19 States." But he did it here from the United States and he
20 targeted a U.S. victim, and for that he and his fellow
21 defendants have to be held accountable.

22 Thank you, your Honor.

23 THE COURT: Thank you. We have an interpreter to be
24 sworn before you begin.

25 (Interpreter sworn)

DAFLCHE1

Opening - Mr. Mastro

1 THE INTERPRETER: Anton Tabuns, T-A-B-U-N-S.

2 THE COURT: Mr. Friedman.

3 MS. FRIEDMAN: Thank you, your Honor.

4 Your Honor, I would like to respectfully suggest that
5 the time for name calling is over. The nice thing about a
6 trial is that it gives both sides at the same time to present
7 the fact finder with the evidence, all the evidence either side
8 thinks is relevant in a context that allows the Court or the
9 jury to get a perspective it doesn't get from the written word
10 or sometimes the spoken word.

11 Let me say that at the end of this trial I think an
12 objective fact finder will conclude that Mr. Donziger did not
13 bribe the judge, that the people that worked with him did not
14 bribe the judge. There are aspects of the way the Ecuadorian
15 legal system works that are different than the way our system
16 works. And when we look at those things through our own
17 glasses, some of those things seem odd, maybe suspicious, if
18 you want to look at them that way.

19 For years though Chevron begged, bargained, did
20 everything it could to move the Ecuadorian plaintiffs.

21 THE COURT: Excuse me to interrupt you. Go right
22 ahead.

23 MS. FRIEDMAN: For years, your Honor, Chevron begged
24 and bargained with the courts in this circuit asking, pleading,
25 that the Ecuadorian's case be sent to Ecuador for trial. It

DAFLCHE1

Opening - Mr. Friedman

1 eventually got its wish.

2 Mr. Donziger had serious concerns about going there.
3 He and the lawyers that worked with him fought very hard, as
4 this Court knows, to stay out of Ecuador. He had very serious
5 concerns about whether the Ecuadorian courts would be able to
6 provide justice to his clients. The people he represented were
7 a disfavored minority in Ecuador similar to the ways American
8 Indians, even African-Americans had been treated in this
9 country. They were looked down upon. There were racial or
10 ethnic slurs directed at them as a commonplace part of that
11 country, and they did not have political power.

12 Many in the judicial system identified with the
13 economically powerful forces in that country. And Chevron, to
14 be sure, was one of the most economically powerful forces in
15 that country. Like Thurgood Marshall, like Ralph Nader, like a
16 most of other civil rights and human rights lawyers before him,
17 Mr. Donziger understood that to get justice for his client
18 there would need to be both legal change and social change. He
19 couldn't have one without the other. They had to go hand in
20 hand.

21 So, yes, he felt the judges needed to be pressured.
22 He felt that they needed to have a spotlight on their
23 activities so things could not be done secretly in the dark
24 behind the scenes. He thought that judges needed to know that
25 the public and the politicians were watching.

DAFLCHE1

Opening - Mr. Friedman

1 And just like Chevron, he did his best to gain
2 attention and gain advantage with the public and the
3 politicians in Ecuador. Over and over again -- and the Court
4 has seen plenty of the documents already, I know -- over and
5 over both sides went to politicians, went to the public, tried
6 to create an atmosphere in which their side would win, much
7 like the atmospherics that took place, the very serious
8 atmospherics that took place in the south during the 1960s. It
9 wasn't pretty. There were a lot of moments that nobody can be
10 proud of on either side. But there was not bribery, at least
11 by the people represented on this side of the table.

12 Working in a foreign country, working in a foreign
13 court system that he knew very little about in the beginning --
14 I think the Court knows Mr. Donziger was only a couple years
15 out of law school when he started working on this case. No one
16 in Ecuador had ever handled a case of this size and complexity,
17 and Mr. Donziger was trying to do something that had never been
18 done before. He was trying to hold a multinational corporation
19 responsible for the environmental harm that it had caused to a
20 third world country, and the remarkable thing is he managed to
21 change the way people think about that.

22 He's here because he managed to get justice for his
23 clients against all odds. He's here because the only way
24 Chevron can avoid paying for this judgment is to attack him, to
25 attack the court system it once so lovingly described, to

DAFLCHE1

Opening - Mr. Friedman

1 attack the judges who work in that court system, to attack
2 virtually every person who lent any assistance to be
3 Ecuadorian's efforts for justice.

4 And if the Court can go back, I'm sure it's repeatedly
5 read Chevron's complaint in this case, virtually everyone in
6 the world is accused of being a coconspirator. Interestingly,
7 many of the things Chevron accuses the affected Ecuadorians and
8 Mr. Donziger of doing Chevron itself did.

9 I want to talk briefly about two things that
10 Mr. Mastro mentioned to the Court because I think they're
11 indicative of how this case is put together. He mentions a
12 Crude clip where Mr. Donziger is saying he would never do this
13 in the United States. We're going to ask the Court to watch
14 the whole clip. And I guess I'll use the word take because
15 when the camera starts and then the camera ends, we call that
16 maybe a take. The clip is the part Chevron selected out of
17 that take to show to the Court.

18 Mr. Donziger going with the media to a judge's
19 chambers, something we wouldn't do here ordinarily. It's not
20 uncommon for, especially before 2009, for lawyers to go ex
21 parte. But, you know, the interesting thing about that clip is
22 it wasn't ex parte. If you watch the rest of the clip, you'll
23 see the Chevron lawyer is there too also, from our perspective,
24 in our eyes, haranguing the judge. And if you look at these
25 clips in context, and I don't think it's unfair to ask the

DAFLCHE1

Opening - Mr. Friedman

1 Court to consider things in context, you're going to see some
2 remarkable things.

3 One of the things you'll see is that very clip
4 Mr. Mastro talked about: If you repeat a lie a thousand times
5 it becomes the truth. If you watch the clip, your Honor, he's
6 expressing his fear about what Chevron is doing. He's
7 essentially saying they're getting away with this, they're
8 repeating a lie a thousand times, it becomes the truth. Over
9 and over and over again the tsunami of out-of-context clips has
10 washed over this court. What we're going to ask the Court to
11 do is step back and watch things, read things in a context
12 that's never been provided before.

13 Your Honor asked Chevron a while ago to clarify its
14 claims, and the Court accepted Chevron's characterizations --
15 this is at docket 720 -- that the discrete inquiry here will be
16 whether the judgment's findings have any support untainted by
17 fraud in the record that existed before the Ecuadorian court.

18 You're going to hear a lot of evidence that was
19 untainted by fraud. If permitted, we intend to show you
20 evidence in the record, much of it Chevron's own evidence. If
21 you read the verdict over and over again, the judge, Judge
22 Zambrano, is citing Chevron's own experts and disregarding for
23 various reasons plaintiff's experts.

24 So what did Steven Donziger do to cause a fraudulent
25 verdict? That's really at the heart of this case. You're

DAFLCHE1

Opening - Mr. Friedman

1 going to hear about the Zambrano verdict and the clarification
2 also written by Judge Zambrano.

3 Then you're going to hear in essence about three
4 buckets of evidence, your Honor. There's the various random
5 acts of Mr. Donziger, many of which I think at the end of this
6 case you'll see are covered by various privileges, including
7 the First Amendment, the right to petition the government. A
8 lot of it is unseemly, a lot of it is rude, a lot of it is not
9 the way we would like to conduct ourselves perhaps from this
10 courtroom in New York. But the world in Ecuador was different,
11 and he was faced with a different set of challenges than most
12 of us are ever faced with.

13 You're going to hear about the Cabrera material. And,
14 finally, you're going to hear about the bribing of the judge.

15 What you're going to see is that the random acts don't
16 lead to any verdict. Most of what Mr. Mastro spent his time
17 talking to the Court about today doesn't go anywhere. It I
18 guess is admissible, and you'll be able to take it into account
19 to kind of judge Mr. Donziger's state of mind at various
20 points, but it didn't cause the verdict.

21 If you look at the Cabrera evidence, what you're going
22 to hear, and Mr. Donziger, what you're going to hear is that
23 Mr. Donziger in his deposition admitted Stratus wrote the
24 executive summary and parts of the annexes. And, your Honor,
25 what you're going to hear is there are actually four parts to

DAFLCHE1

Opening - Mr. Friedman

1 the Cabrera report. And by far the largest part is the data,
2 the scientific data that was collected by Cabrera and others
3 where there's really no dispute. That is the data.

4 What you're going to hear though is that about
5 5 percent of the report, the executive summary and some other
6 parts, were in fact written by Stratus. And we'll leave for
7 later the debate about the implications of that, but one
8 implication is clear. Mr. Donziger and the people associated
9 with him took steps to downplay their involvement in authoring,
10 helping to author the Cabrera report. It's beyond dispute.

11 The problem is that it doesn't lead anywhere. The
12 problem for Chevron is that the judge noted the objections, the
13 allegations of fraud, and he says I'm not going to rely on the
14 Cabrera report. And as a result, a giant chunk of the damages
15 dropped out of the case, billions of dollars dropped out of the
16 case.

17 So in the United States, this might be the appropriate
18 litigation sanction. Mr. Donziger might even be put up to the
19 bar on ethical charges. But it didn't play a part in the
20 verdict, the verdict that was designed to provide justice for
21 the harm done to the people living in the Ecuadorian region.

22 So the Cabrera verdict doesn't lead anywhere. It
23 doesn't, I'm sorry, the Cabrera report doesn't lead anywhere.
24 The only way to get to where Chevron wants to get, the discrete
25 inquiry of whether or not fraud tainted the verdict in Ecuador

DAFLCHE1

Opening - Mr. Friedman

1 has to be arrived at through the allegations of bribing the
2 judge.

3 I'm sorry, I got a little ahead of myself. This is
4 the slide that shows that Judge Zambrano did not consider the
5 report, the Cabrera report. And this is one example in the
6 second box, your Honor, there, throughout the verdict repeated
7 references to the Court is going to rely upon the Chevron
8 experts and not the plaintiff experts in arriving at its
9 verdict.

10 As the Court is aware, the Court of Appeals of Ecuador
11 provides de novo review, not like our appellate courts. In
12 fact, the judgment, the verdict of Judge Zambrano, did not even
13 become effective. It could not even be enforced until after
14 the Court of Appeals ruled on the verdict and did its own de
15 novo review. It did its own de novo review. And as far as
16 I've heard and seen in this case -- maybe I've missed
17 something; I've only been involved a short time -- I haven't
18 seen any allegations that the judges on the Court of Appeals
19 were biased or bribed or corrupted in some way.

20 They went back in the record -- and we'll be
21 presenting you with their order and clarification -- and what
22 you're going to see is that they specifically take up most of
23 the allegations you're going to hear in this courtroom, and one
24 by one they knock them down. They say Chevron says this isn't
25 in the record or that it comes from an improper place and then

DAFLCHE1

Opening - Mr. Friedman

1 they go and say here's where it is. It is in the record. In
2 fact, Chevron, you introduced it into the record. Not every
3 time, but over and over again they take up Chevron's positions
4 and say it is right here in the record.

5 So the Ecuadorian appellate court provides de novo
6 review, it looked back into the record, it cited to the
7 findings of Chevron's own experts. Go to the next one.

8 And so Chevron's case does come down to a story
9 provided by a single witness. An admitted liar, someone who is
10 soliciting bribes from the very beginning of his involvement in
11 this case, whose story has changed multiple, multiple times on
12 big issues and small issues, Alberto Guerra.

13 Here's what Chevron paid for the testimony of Alberta
14 Guerra: 18,000 in cash delivered in a suitcase, state of the
15 art computer, an additional \$20,000 payment, new cell phones,
16 all travel and moving expenses for Guerra, his family, his
17 son's family from Ecuador to the United States.

18 I'm going to stop there, your Honor, and just say
19 you're going to hear that's a big deal. The American dream is
20 alive and well in the third world, and getting a ticket to
21 America is a very big deal. Mr. Guerra got not only himself to
22 the United States, but his entire family and his son's family.
23 He's getting 12,000 a month since he came here, new car, health
24 insurance for him, his family, payment for a lawyer to
25 represent him in dealing with any federal or state authority,

DAFLCHE1

Opening - Mr. Friedman

1 civil matters, and payment for an immigration lawyer for
2 everyone in his family. That's what Mr. Guerra got out of the
3 deal.

4 So here's Mr. Guerra's story. And really it begins
5 before Judge Zambrano where Mr. Guerra and a Mr. Hanson, Mr. --
6 I'm sorry, a Chevron contractor and a drug trafficker
7 approached a sitting judge in Ecuador and tried to get him to
8 take a bribe. That's Mr. Borja. And they are saying they are
9 looking for proof that Ecuador is corrupt. And they film
10 several conversations with this judge, Judge Munoz, the judge
11 they approached, clearly turned down the bribe, although
12 Chevron tried to suggest he was considering or taking it. I
13 think several of the courts that looked at all this material,
14 federal courts, said it's clearly not him taking a bribe. He
15 turned it down. But he wound up recusing himself because he
16 probably shouldn't have talked to these gentlemen in the first
17 place.

18 Judge Zambrano is temporarily assigned to the case at
19 that point. Judge Zambrano, as you know, is assigned to the
20 case twice. So first he is assigned to it at this point when
21 Judge Munoz drops out of the case. And, again, Chevron's story
22 is they were taping or their people were taping this contact
23 with Judge Munoz so they to show how corrupt the Ecuadorian
24 system was.

25 (Continued on next page)

DAF8CHE1

Opening - Mr. Friedman

1 MR. FRIEDMAN: Well, Zambrano was then substituted in
2 for Judge Munoz. Mr. Guerra, who is no longer on the bench
3 himself, he is no longer a judge, he says that at Zambrano's
4 request he approaches Chevron. So Chevron, who supposedly
5 wants to get proof of corruption in the Ecuadorian system,
6 doesn't report this. This is in August of 2009.

7 In that August of 2009, he tells Chevron, in effect,
8 he can fix the case. And Chevron doesn't report this, doesn't
9 film him, apparently just lets that pass.

10 Then Mr. Guerra says later, in September of 2010, when
11 Judge Zambrano was back on the case, he was only temporarily
12 assigned as acting judge the first go-around, in 2010,
13 Mr. Guerra says, again at Judge Zambrano's request, he is sent
14 out again to approach Chevron, and again Chevron is so
15 interested in finding corruption, doesn't tape him, doesn't
16 report it, just sits on the information.

17 So now they approached him twice. Chevron doesn't put
18 him under surveillance, doesn't do a thing about it.

19 At some point Mr. Guerra says he then went to the
20 plaintiffs -- I'm sorry, I got that wrong. He says at some
21 point -- oh, yes, he went to plaintiffs and was turned down.
22 Plaintiffs said, we can't pay you, according to Judge Guerra.

23 So at the directions of Mr. Zambrano, Judge Zambrano,
24 Guerra again, now for the third time, approaches
25 Zambrano -- I'm sorry, approaches Chevron. I apologize, your

DAF8CHE1

Opening - Mr. Friedman

1 Honor. The story keeps changing, and I got that wrong so let
2 me start over. Guerra says that in 2010, Judge Zambrano tells
3 him that he has made a deal on his own, and he wants Guerra to
4 help him write a verdict. And the deal, as Mr. Guerra is told,
5 is that in the future, if plaintiffs recover money, they will
6 pay 500,000 -- he says 300 and then he says 500,000 to Judge
7 Zambrano, which he and Mr. Guerra will split.

8 So according to Mr. Guerra, he and Mr. Zambrano are
9 now working for the plaintiffs. They write a verdict that is
10 actually ghost written by the plaintiffs, but Mr. Guerra comes
11 in and works extensively on it for over ten hours to get it
12 into shape. The verdict comes out.

13 Then it goes all the way up on appeal to the Court of
14 Appeals. And then in April of 2012, Judge Zambrano is no
15 longer a judge. Mr. Guerra, of course, is no longer a judge.
16 According to him, when the appellate decision is out and the
17 judgment is enforceable, at that point in time, Mr. Zambrano
18 sends Mr. Guerra out to Chevron again, the third time he has
19 been sent out to solicit money by Mr. Zambrano by Chevron.

20 This time Chevron says yes. They pay him a lot of
21 money. They send him and his family to America. They execute
22 a deal, a written agreement with him. And Chevron sends Guerra
23 back to have his own operatives contact Zambrano. They want
24 him to be a bridge to Zambrano.

25 And Zambrano, who supposedly has three times solicited

DAF8CHE1

Opening - Mr. Friedman

1 a bribe from Chevron, who three times has coordinated with
2 Guerra to get money from Chevron, is no longer a judge, whose
3 life is no longer going very well. He has offered to name his
4 price, Judge Zambrano, offered to name his price. We have
5 gotten Guerra out, we can get you out, land of milk and honey,
6 lots of money. And Zambrano, who has been soliciting this all
7 along, now says, No, I am not interested and, in fact, reports
8 the whole thing to the police.

9 Guerra has no explanation for why Judge Zambrano, who
10 over and over supposedly was soliciting bribes, suddenly wasn't
11 interested. I would suggest to the Court that Judge Guerra
12 conned Chevron, and he is going to try to con you. Con men
13 know that the easiest way to con people is by telling them
14 things they want them to believe. This Court may want to
15 believe that Steven Donziger and his associates bribed a judge.
16 Lord knows he has given this Court --

17 THE COURT: Mr. Friedman, you came in here, you talked
18 about objectivity and getting the evidence on the table in a
19 neutral way, and that's the last time I am going to tolerate
20 that sort of a suggestion in this courtroom. Now proceed.

21 MR. FRIEDMAN: I am sorry, your Honor. Which
22 suggestion?

23 THE COURT: Think carefully about it.

24 MR. FRIEDMAN: I don't want to violate your order.

25 THE COURT: I will take that to be an accident that

DAF8CHE1

Opening - Mr. Friedman

1 time. It better not happen again. Proceed.

2 MR. FRIEDMAN: I really want to follow your orders, if
3 you could tell me what I did.

4 THE COURT: Read the transcript later. Go ahead.

5 MR. FRIEDMAN: To deliver a verdict for Chevron in
6 this case, your Honor, you have to first believe this
7 incredible story. Then you have to venture out on to the shaky
8 legal limbs that Chevron is suggesting to this Court. You have
9 to say there is a RICO injunction available to private
10 plaintiffs. You have to say that a New York common law fraud
11 claim can be brought here for bad acts done in a foreign
12 country. And you have to say that the Ecuadorian legal system,
13 rated by one independent agency, is better than 55 percent of
14 the countries in the world, is not up to the task of policing
15 itself. Because the Supreme Court of Ecuador has all of this
16 before it, there is also a separate criminal investigation
17 going on as well that I think the Court is going to hear, if it
18 hasn't already in this trial, you're going to have to say that
19 across 3,000 miles, across a language barrier, across a
20 cultural barrier you're better able to resolve this issue than
21 the people and the judges in Ecuador.

22 And if you do that, this truly will be a new paradigm
23 case. We are going to ask you not to do this at the end of
24 this trial.

25 Thank you.

DAF8CHE1

Opening - Mr. Friedman

THE COURT: Let's take a very short break.

(Continued on next page)

DAFLCHE3

Opening - Mr. Gomez

1 THE DEPUTY CLERK: Would the interpreter, Mr. Luke
2 Weiss, please rise and raise your right hand.

3 (Interpreter sworn)

4 THE INTERPRETER: Luke Weiss, W-E-I-S-S.

5 THE COURT: Okay. Now, Mr. Gomez, when we had our
6 final pretrial conference, we allocated 30 minutes opening for
7 the plaintiffs and 30 minutes shared by the defendants.
8 Mr. Friedman has used it up, but if you want to make a brief
9 opening, I'll allow you.

10 MR. GOMEZ: I appreciate that, your Honor. Very
11 briefly.

12 THE COURT: Proceed.

13 MR. GOMEZ: Your Honor, approximately 20 years ago,
14 Ecuadorian plaintiffs like my clients, Hugo Camacho and Javier
15 Piaguaje, were in this court, right here in the Southern
16 District, seeking justice and accountability for Texaco's
17 pollution in the Oriente region of Ecuador. At that time
18 Texaco argued that case did not belong in New York. It argued
19 that any indication about pollution in Ecuador belonged in
20 Ecuador. It argued that Ecuadorian courts were fair and
21 impartial, and this court sent the Ecuadorians packing.

22 Twenty years later Chevron is back forcing the
23 Ecuadorians to return against their will to a court that has no
24 jurisdiction over them, crying that it couldn't get a fair
25 trial in Ecuador, crying that it was defrauded. Chevron wants

DAFLCHE3

Opening - Mr. Gomez

1 this Court to believe that a multibillion dollar company, one
2 of the richest in the world, is the victim of a farmer, a canoe
3 operator, and a couple of attorneys like Steven Donziger
4 working out of his apartment.

5 It wants this Court to believe that Chevron was unable
6 with its army of lawyers like we see here today, its
7 infrastructure, its massive resources, its largess, to fully
8 and fairly present its case in a little provincial court in
9 Lago Agrio, Ecuador. Not true, your Honor.

10 Hugo and Javier did not defraud anyone, nor did their
11 attorneys. They did not lie to anyone. They did not cheat.
12 And this Court will never see any evidence that they asked
13 anyone to do so, knew about it if it happened, or that anyone
14 materially relied on anything to Chevron's detriment in any
15 meaningful way. And they certainly did not bribe any judge.

16 The judgment at issue in this case is one of the most
17 important judgments in history -- \$18 billion against a
18 multinational company. When was the last time we saw a U.S.
19 court with the guts to issue a judgment like that? No wonder
20 Chevron has come back to the United States. But it comes to
21 this court, your Honor, with unclean hands.

22 Chevron never had any intention to play by the rules
23 in Ecuador, and it hasn't played by the rules or fairly here.
24 Many of the witnesses that Mr. Mastro pointed out have either
25 been threatened with economic annihilation, your Honor,

DAFLCHE3

Opening - Mr. Gomez

1 compensated for their evidence.

2 Chevron and its lawyers are going to ask this Court to
3 steamroll us through this trial. Chevron is going to ask this
4 Court to let it off the hook. And Chevron waived millions of
5 dollars in damages because it did not have the courage to face
6 a jury. No, sir, Chevron is counting on you. Chevron is going
7 to show you what kind of a case real money can buy -- perfectly
8 scripted testimonies, edited out-of-context video, and lots of
9 fancy experts, your Honor, professors of law, forensics, real
10 CSI-type stuff. Because Chevron has spared no expense, your
11 Honor, spent millions even, to avoid ever having to pay a dime
12 to clean the land where my clients live.

13 Thank you.

14 THE COURT: Thank you. All right. Mr. Mastro, your
15 first witness.

16 MR. MASTRO: Your Honor.

17 MS. FRIEDMAN: Your Honor, could I address the Court
18 for just a minute?

19 THE COURT: Yes, sir.

20 MS. FRIEDMAN: Your Honor, there's one issue that --
21 couple issues actually.

22 The main one I wanted to mention is this issue of the
23 Doe witnesses. I'm a little uncomfortable starting to
24 cross-examine witnesses knowing nothing about two to four of, I
25 guess, crucial witnesses in this case.

DAFLCHE3

1 THE COURT: Two of them are on the witness list, only
2 two of them?

3 MS. FRIEDMAN: That's right. They dropped two. I
4 forgot.

5 I don't know how you're planning to proceed or how
6 Chevron is planning to proceed. But I think before I start
7 cross-examining, maybe they have -- the Court will know and if
8 in fact these witness have nothing to do with the witness I'm
9 cross-examining, then it doesn't matter. But if they do have
10 something to do with the witness I'm cross-examining, I think
11 we need to address that.

12 MR. MASTRO: Your Honor, they do not have anything to
13 do with either the first two witnesses. We noticed, noticed to
14 the Court last night that we wanted to raise this issue. So we
15 hope we'll be able to do it at the end of the trial day, but I
16 can't imagine it will have any implications with Mr. Veiga or
17 Mr. Bogart, our first two witnesses.

18 THE COURT: I think that's right.

19 And Mr. Friedman, Mr. Gomez has read their affidavits,
20 and certainly he's in a position to say to you at least whether
21 they have anything to do with these witnesses.

22 MS. FRIEDMAN: Mr. Gomez is being very careful about
23 what he tells me, your Honor.

24 THE COURT: Well, I hope he is.

25 MS. FRIEDMAN: I don't blame him. So, no, I don't

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1 know if they relate. And I don't think he feels comfortable
2 telling me really anything, understandably.

3 THE COURT: We'll deal with that shortly.

4 MS. FRIEDMAN: The other issue I had was whether the
5 Court as a matter of practice invokes evidence Rule 615 or if
6 it's been invoked in this case, I just don't know.

7 THE COURT: Well, if I remember the number correctly,
8 I do on request. Let me just make sure we're talking about the
9 same rule.

10 MS. FRIEDMAN: The exclusion of witnesses, your Honor.

11 THE COURT: I invoke it on request.

12 MS. FRIEDMAN: And I guess I would request that it be
13 invoked. And, well, I guess before I request that, I would
14 like some guidance from the Court and Chevron about how that
15 would be interpreted because we have this procedure where we've
16 got these declarations that are written of direct testimony,
17 sort of in my experience unusual.

18 THE COURT: It's not unusual. Probably a majority of
19 the judges in this court and others with which I'm familiar do
20 this.

21 MS. FRIEDMAN: I understand. I'm just unfamiliar with
22 it, your Honor.

23 And so what I'm trying to understand is, for example,
24 if the rule is invoked, would that prohibit us, both sides,
25 from showing direct witness statements of one witness to

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1 another witness?

2 THE COURT: What's your view on that, Mr. Mastro,
3 Mr. Gomez?

4 MR. MASTRO: Well, your Honor, we haven't invoked the
5 rule.

6 THE COURT: He has. So could we?

7 MR. MASTRO: Yes. I would think under those
8 circumstances, if he invokes it, we shouldn't be showing
9 witness statements of one witness to another.

10 THE COURT: Do you have any different view, Mr. Gomez?

11 MR. GOMEZ: No, your Honor.

12 THE COURT: Do you have any different view?

13 MS. FRIEDMAN: No, your Honor.

14 THE COURT: All right. That's the ruling.

15 MS. FRIEDMAN: Can I say one more thing, your Honor.

16 I just I want the Court to know I'm very concerned
17 about following your orders and doing this right. And I've
18 never been -- it's not my practice to come into court and be
19 unprepared on the facts of the law. But, frankly, I'm not
20 asking for a continuance. I'm just letting the Court know that
21 Ms. Littlepage and I are going to make mistakes of fact and
22 law. We're working very hard to avoid that, but.

23 THE COURT: I certainly accept that.

24 MS. FRIEDMAN: Thank you, your Honor.

25 THE COURT: Until proven otherwise, I assume all

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1 lawyers before me are acting in total good faith.

2 MS. FRIEDMAN: My point, your Honor, is we've only
3 been involved in the case for a few weeks, and it's a complex
4 case. I just I feel bad that I made the mistake in opening,
5 and I'm going to do my best to not make mistakes.

6 THE COURT: I appreciate that.

7 MR. MASTRO: Your Honor, just a couple things before
8 we start.

9 I just want to clarify that if Mr. Donziger's lawyer
10 says now invoked that rule and asked the Court to sequester
11 witnesses, first of all, obviously up until now there's been no
12 sequestration, so the extent any witness saw anything that
13 another witness was doing, of course.

14 But, your Honor, I don't actually know in this
15 courtroom whether they have other witnesses in this courtroom.
16 I see Mr. Piaguaje is here and Mr. Donziger.

17 THE COURT: They're parties.

18 MR. MASTRO: Of course. But I also have here in this
19 courtroom Mr. Pate, who is the general counsel of Chevron.
20 He's on their witness list for some reason although they never
21 deposed him. He's Chevron's legal representative. I would ask
22 for an exception for him.

23 THE COURT: The rule provides that parties and
24 representatives of parties, that is, officers and directors --
25 let me not ad lib it. A party who is a natural person, an

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1 officer or employee of a party that is not a natural person if
2 that person is designated as the party's representative by its
3 attorney, and a person whose presence a party shows to be
4 essential to presenting the claim or defense. All are
5 permitted in the courtroom notwithstanding the invocation of
6 Rule 615.

7 If you're designating Mr. Pate as Chevron's
8 representative, then he's entitled to be here.

9 MR. MASTRO: Thank you, your Honor. I am.

10 Your Honor, I do see, now that I've had to chance to
11 look around the courtroom, I see Ms. Hinton, Karen Hinton. I'm
12 looking forward to cross-examining her. She's on their witness
13 list. So the sequestration would apply to her, your Honor.

14 THE COURT: All right. Ms. Hinton, you have to leave
15 the courtroom.

16 MR. MASTRO: Your Honor, just one other clarification.
17 I should have mentioned the exhibit number of something I
18 referred to in my opening, that's PX1059. That's an email
19 Mr. Donziger writes, if you tell a lie a thousand times,
20 there's no mention of Chevron in it.

21 Now, your Honor, the first thing I wanted to do before
22 we call our first witness is, as I said I would do on
23 Wednesday, is offer all of the designated deposition testimony
24 that Chevron is designating as part of its affirmative case.
25 And we have put it together the way your Honor asked us to and

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1 worked it out with the defendants. We're offering the
2 deposition testimony of 20 witnesses and four of the witnesses
3 at the sanctions hearing. We have included in that all of
4 their counterdesignations for any of those 24 depositions.
5 We've also included with it all of our objections to any of
6 their counterdesignations, both in terms of beyond the scope of
7 context as well as other evidentiary objections.

8 They have not actually stated objections yet, your
9 Honor to our designations. So I don't know when they intend to
10 do that, but we certainly have asked them repeatedly to do
11 that. They have not.

12 We have here both the video versions of all the
13 depositions.

14 THE COURT: I got the point. The exhibit numbers are
15 what?

16 MR. MASTRO: We marked them, your Honor, Exhibit B for
17 the depositions and Exhibit C for the hearing designations.

18 THE COURT: They have numbers, right?

19 (Continued on next page)
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1 MR. MASTRO: We designated them B and C, but we can
2 get a number. It's not a problem.

3 THE COURT: I am confused. Exhibit B is what exactly?

4 MR. MASTRO: Exhibit B is all of the designations from
5 depositions and Exhibit C is all the designations from the
6 sanctions hearing.

7 THE COURT: All right. Is there any objection?

8 MR. FRIEDMAN: I just want to make sure I understand,
9 because Mr. Mastro started out talking about witness
10 declarations.

11 MR. MASTRO: Depositions.

12 THE COURT: Perhaps you misheard.

13 MR. FRIEDMAN: He is moving in Exhibit B, which is all
14 the deposition designations. We do not have an objection to
15 that.

16 THE COURT: And C is the designations from the
17 testimony of the sanctions hearing.

18 MR. FRIEDMAN: I apologize, your Honor. Ms.
19 Littlepage tells me we do have objections to the deposition
20 designations. I thought those had been presented to Chevron
21 and they have not been.

22 THE COURT: When you say you have an objection, you
23 have an objection to any and all of that testimony or are you
24 saying that you have specific objections to individual
25 questions and answers?

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1 MR. FRIEDMAN: Yes, the latter.

2 THE COURT: You provided them to the plaintiff?

3 MR. FRIEDMAN: We have not done that.

4 THE COURT: When do you propose to do that?

5 MR. FRIEDMAN: We are working on it. We are trying to
6 get it done. We'd like to have about a week to get it to them.

7 THE COURT: I am going to then receive B and C,
8 subject to the filing on or before October 21 of the
9 plaintiff's objections to specific questions and answers. What
10 I will do with that, as I may have indicated to you previously,
11 is that any objections that were made to the form of questions
12 at the depositions are preserved. Considering the deposition
13 testimony, I will take into account the defendants' objections.
14 To the extent, if any, that the objections prove to be
15 material, I will rule on them specifically in my ultimate
16 determination. If I rely on something in my ultimate
17 determination, as to which there was objection without ruling
18 specifically, you may take it that the objection is overruled,
19 but your points are all preserved.

20 MR. FRIEDMAN: Very well. Thank you.

21 (Plaintiff's Exhibits B and C received in evidence)

22 THE COURT: So you have until October 21 for the
23 specific objections.

24 MR. FRIEDMAN: Thank you, your Honor.

25 THE COURT: All right. Anything else?

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1 MR. MASTRO: I am just handing up the disks.

2 THE COURT: All right.

3 MR. MASTRO: One more matter before we call our first
4 witness.

5 THE COURT: What you have handed up is an external
6 hard drive.

7 MR. MASTRO: Correct. We also have the paper record
8 of the booklets.

9 THE COURT: Fine. The clerk will mark the paper
10 record. We will do that later, not right now. Give it to the
11 clerk at the close of the day. And the hard drive you have
12 handed up says deposition designations. Does this include
13 Exhibit C also?

14 MR. MASTRO: Yes, your Honor. It includes Exhibit B
15 and Exhibit C.

16 THE COURT: So let's mark the hard drive here, a copy
17 of Plaintiff's Exhibit B and C, and the hard copies will be
18 marked in due course.

19 Are you ready to proceed?

20 MR. MASTRO: Yes, your Honor. One more motion that we
21 have.

22 Your Honor, we have prepared and ready to move the
23 admission of all of our trial exhibits, and we have prepared
24 for the Court a detailed index of the documents,
25 cross-referencing why authenticity and admissibility are

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1 established, and any cross-references to where they appear in
2 the record already.

3 Your Honor, under Rule 801(d)(2) about how half of
4 these documents, 1200 or so, come straight out of defendants'
5 own files or the files of their agents and co-conspirators.
6 About 400 of these documents come out of the Lago Agrio court
7 record of foreign government documents and from other foreign
8 courts. And under 902(3), the vast majority of them have
9 already been accompanied by official certifications. The rest
10 are in the process of getting that, but they are presumptively
11 authentic. We have no reason to believe there will be any
12 objection to them.

13 There are 900 other documents that are not being
14 offered for the truth of the matters asserted. We have tried,
15 as we have explained, to get the cooperation of the defense.
16 They had all these documents since the pretrial order, even
17 before that, because we exchanged them.

18 THE COURT: And these are plaintiff's exhibits
19 numbered what?

20 MR. MASTRO: They are numbers 1 through 2508, your
21 Honor. We have withdrawn several of the documents. So what we
22 are about to hand up to the Court withdraws Plaintiff's
23 Exhibits 218 through 220, 661 through 665, 667 through 671,
24 673, 1168, and 1673 through 76.

25 It's also the case, your Honor, we have all of the

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1 crude clipped transcripts reviewed by our expert court
2 transcriber and translator who will be testifying at this
3 trial, Cristina Arsuaga, and she has found in some instances,
4 working off a high-definition platform, she could hear some
5 additional words. So we are offering those transcripts. It's
6 17 out of 93 transcripts. She will be here to authenticate
7 them here in person.

8 THE COURT: She will be here to authenticate later.

9 MR. MASTRO: We have replaced within the exhibit group
10 the final transcripts that she will authenticate. So subject
11 to that connection, they are within this group.

12 That really covers it, your Honor.

13 THE COURT: Let's see if it covers it.

14 Mr. Friedman.

15 MR. FRIEDMAN: Your Honor, by and large, you won't be
16 hearing many authenticity objections from us, foundational
17 objections, but we have many objections to many of these
18 exhibits. I don't know how to proceed with 2000-plus exhibits
19 and --

20 THE COURT: You're not alone in that, you understand.

21 MR. FRIEDMAN: Fair enough. I was hoping, I guess I
22 assumed, maybe wrongly --

23 THE COURT: Which is not to say that your own exhibit
24 list isn't in the four figures.

25 MR. FRIEDMAN: We haven't moved them all in.

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1 THE COURT: I assume they are there for a reason.

2 MR. FRIEDMAN: My point, your Honor, is if we take
3 them witness by witness, like Mr. Veiga, for example, there are
4 some objections we have to some of the exhibits that are in his
5 declaration that we are prepared to argue about. I guess I
6 would suggest we do it in the order as the witnesses show up so
7 that you know what you're ruling on.

8 THE COURT: Look, this, of course, is not the way it's
9 supposed to work. The pretrial order process was designed to
10 get all this done long before trial. We won't have the usual
11 debate about why it didn't happen, but it just didn't. So what
12 we will do here is that from now through Thursday, we will
13 handle the exhibits witness by witness. And then on Friday,
14 Saturday and Sunday, you folks are going to have to get
15 together and work this all out and present me with a list of
16 the stuff as to which there is no objection and the stuff as to
17 which there are objections, and once I see that list, I will
18 decide how to handle it. But I need to have that, let's say,
19 by midday on Sunday.

20 Now, I know everybody is working hard here, not least
21 of all me. I am not asking for sympathy. But we are just
22 going to have to do it that way for the time being.

23 MR. FRIEDMAN: I understand.

24 THE COURT: OK, Mr. Friedman?

25 MR. FRIEDMAN: That's OK.

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1 I have a couple of issues with regard to that that
2 might speed things up.

3 THE COURT: Yes. Go ahead.

4 MR. FRIEDMAN: I know the Court has already ruled on
5 Mr. Donziger's notebook or diary in terms of its disclosure
6 over privilege objections. I know you have already ruled on
7 that.

8 THE COURT: Not only have I ruled on it, if memory
9 serves, the Court of Appeals ruled on it.

10 MR. FRIEDMAN: All I was going to ask if I could have
11 a standing objection to all of the diary entries on work
12 product and attorney-client privilege grounds, and then I won't
13 have to be constantly raising that as we go through the trial.

14 THE COURT: Unless I am mistaken, that ship sailed no
15 later than 2011. So you do what you think you have to do,
16 counsel, and if it becomes disruptive, we will work something
17 out. But in my view, you don't have any objections on that
18 ground to that diary.

19 MR. FRIEDMAN: I understand your Honor. That's why I
20 didn't want to belabor the point. If I could have a standing
21 objection to any of the diary coming in over work product and
22 attorney-client privilege grounds, I won't ever have to bring
23 the issue up again.

24 THE COURT: Well, look, you have made your position
25 clear. I understand what your position is, and no doubt an

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1 appellate court, if you ever get there, should that prove
2 necessary, will understand it.

3 Let's just proceed.

4 MR. FRIEDMAN: Does that mean I do have a standing
5 objection?

6 THE COURT: I don't know which rule of the Federal
7 Rules of Evidence say standing objection, no standing
8 objection. I don't believe the phrase appears anywhere there.

9 MR. FRIEDMAN: We all know what it means, your Honor.

10 THE COURT: Yes, we do. So let's just proceed.

11 MR. FRIEDMAN: All right. We have the same objection,
12 your Honor, to all of the e-mails that were produced by Mr.
13 Donziger and his co-counsel on the same work product and
14 attorney-client privilege grounds.

15 THE COURT: The Court of Appeals spoke to that also.

16 MR. FRIEDMAN: I understand.

17 I think that's all I need to address right now.

18 THE COURT: Thank you very much.

19 MR. MASTRO: Thank you for directing the parties to
20 have that exchange. I just wanted to point out, obviously,
21 with 2500 exhibits, and we are trying to do a case in two
22 weeks, we are planning to offer many of those exhibits to the
23 Court in a bench trial, not necessarily use each individual one
24 with the witness.

25 THE COURT: I certainly understand that.

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1 MR. MASTRO: I just wanted to make that clear.

2 THE COURT: I am in effect, once again, giving the
3 defense more time to do things that they should have done a
4 long time ago. I am not faulting Mr. Friedman or Ms.
5 Littlepage, though now that I learned they have been in the
6 case for weeks rather than days, something might have been
7 attended to earlier, but I am sure they have been very busy.

8 Let's proceed with the witness.

9 MR. MASTRO: Chevron calls its first witness, Ricardo
10 Reis Veiga.

11 THE COURT: Mr. Mastro, is his witness statement
12 already marked as something?

13 MR. MASTRO: Yes, it is, your Honor. We have marked
14 it as Plaintiff's Exhibit 3000.

15 RICARDO REIS VEIGA,

16 called as a witness by the plaintiff,

17 having been duly sworn, testified as follows:

18 THE DEPUTY CLERK: State your name and spell your full
19 name for the record.

20 THE WITNESS: Ricardo, R-I-C-A-R-D-O, Reis, R-E-I-S,
21 Veiga, V-E-I-G-A.

22 THE COURT: Proceed, counselor.

23 MR. MASTRO: Before we begin, Mr. Veiga has been going
24 through a personal ordeal. He just got back to the country
25 recently. I just wanted him to explain what he has been going

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1 through and confirm that he is ready to proceed.

2 THE WITNESS: Well --

3 THE COURT: Excuse me, Mr. Reis.

4 Is this in some way relevant?

5 MR. MASTRO: It's fine, your Honor. I just wanted to
6 make sure, he is dealing with a personal tragedy and I wanted
7 to make sure he is ready to proceed.

8 THE COURT: Why don't you ask him that.

9 DIRECT EXAMINATION

10 BY MR. MASTRO:

11 Q. Mr. Veiga.

12 A. Unfortunately, my wife passed away a month ago and I had to
13 go to my native country Brazil to dispose of her ashes and pay
14 her last respects.

15 Q. Are you sure you're ready to proceed today to give your
16 testimony today?

17 A. Yes, I am.

18 THE COURT: I am sure, sir, you have the sympathy of
19 everyone in the courtroom.

20 THE WITNESS: Thank you, your Honor.

21 MR. MASTRO: May I approach the witness?

22 THE COURT: You may.

23 Q. Mr. Veiga, I hand you what has been marked as Plaintiff's
24 Exhibit 3000.

25 Mr. Veiga, do you recognize what that is?

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Veiga - direct

1 A. Yes, I do.

2 Q. That's a declaration that you submitted to the Court in
3 connection with this trial, correct?

4 A. That's correct.

5 Q. Is that a true and correct copy of your declaration,
6 Plaintiff's Exhibit 3000?

7 A. Yes, it is.

8 Q. Did you sign it, sir?

9 A. I did.

10 Q. Can you go to the last page and confirm to the Court
11 whether or not that's your signature?

12 A. That's my signature.

13 Q. At the time you signed your declaration, were your
14 statements true and accurate to the best of your knowledge?

15 A. Yes, they were.

16 Q. Is everything in your declaration true and accurate as of
17 today?

18 A. Yes, they are.

19 Q. Mr. Veiga, do you offer your declaration as your full and
20 complete direct testimony in this trial?

21 A. Yes, I do.

22 MR. MASTRO: I offer Plaintiff's Exhibit 3000.

23 MR. FRIEDMAN: Your Honor, we have objections to
24 certain paragraphs in that declaration. I don't know how you
25 would prefer to handle that.

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Veiga - direct

1 THE COURT: Let me look at them.

2 MR. FRIEDMAN: The first one is in paragraph 3.

3 THE COURT: Just give me the numbers first.

4 MR. FRIEDMAN: It would be 3, 14, 15, 16, 17, 18, 19,
5 21, 22, 23, 24, 25 through 35, 36 through 41. These are not in
6 any specific group. This is as I made my notes today. 54
7 through 57, 59 through 62, 67, 80, 82, 85, 86, 87, 88, 89, 125,
8 127, 128 and 138.

9 THE COURT: Now, do these fall into a couple of
10 categories?

11 MR. FRIEDMAN: I think some of it does, your Honor. I
12 the big category, I would say, is there is a lot of reference
13 to the remediation agreements with the Republic of Ecuador and
14 the settlement of claims with the Republic of Ecuador and with
15 various municipalities. I am sort of giving you a broad brush.

16 THE COURT: That's what I asked for.

17 MR. FRIEDMAN: That's the thrust of a big category of
18 this. So a lot of these, particularly in the roughly 3 through
19 35 range that I gave you, virtually all of those are
20 remediation settlement type objections. The threshold question
21 of course for the Court is, are we going to get into issues of
22 settlement discussions with other parties and remediation
23 agreements I guess would be the way to say it.

24 The rest, your Honor, although there are some more in
25 that category, the rest don't really fall into clear categories

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Veiga - direct

1 like that. That's the main issue here.

2 THE COURT: All right. With respect to the rest,
3 having read this carefully, I would imagine that here and there
4 there are hearsay and personal knowledge objections and
5 argumentative. Is that about it?

6 MR. FRIEDMAN: There is also some expert legal opinion
7 being offered at various points, and a lot of speculation,
8 mind-reading going on. So, yes, I think you have got the
9 sense, without going through them one by one.

10 THE COURT: So let's deal with it this way, which is
11 consistent more or less -- it's consistent with what I
12 generally do.

13 I have your points. You have enumerated which
14 paragraphs there are issues about in your mind. I will take it
15 all subject to your objections, and we will deal with it the
16 same we dealt with the objections on the depositions. That is
17 to say, if it turns out to matter, I will rule on it. I am
18 certainly very well able to understand that when a witness
19 said, I understand by reason of having talked to somebody else,
20 there just might be a little bit of a hearsay problem, and I am
21 very conscious of these things. It would have been more
22 helpful if the document had been drafted in a way that avoided
23 that sort of thing, but lawyers argue their cases whenever they
24 get a case chance, and I know the difference.

25 To the extent you think any of it is important, you

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Veiga - direct

1 will get an opportunity either before we conclude the trial or
2 in any post-trial briefing to be more specific with respect to
3 the paragraphs and the points you have raised, if you want to
4 elaborate on it.

5 MR. FRIEDMAN: I wonder if it would be appropriate for
6 us to just file a written set of objections to each declaration
7 as it comes in.

8 THE COURT: That will be fine. That will be
9 preferable.

10 MR. FRIEDMAN: I think that's what we will try to do
11 from now on.

12 THE COURT: Starting in a day or so, I will expect you
13 to be ready to do that when it's filed. With respect to what
14 comes in today and tomorrow, get it to me by the first of the
15 week, unless there is going to be an issue where the nature of
16 the objection is such that if the witness were on the stand,
17 there would be some prospect of his curing it, in which case I
18 want to hear it right away.

19 MR. FRIEDMAN: I think that's where we are with the
20 remediation settlement issue, in that a big part of this -- the
21 question for me is, do I cross-examine him on this issue or is
22 it out of the case? That's the question.

23 THE COURT: Fair point.

24 Mr. Mastro, what do you say about that?

25 MR. MASTRO: On the remediation question, first,

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Veiga - direct

1 that's offered for background purposes. We don't go into more
2 than the general background and history of his experience.
3 It's also offered for this witness to reflect his own state of
4 mind about what was going on in Ecuador and how he was treated
5 because, of course, this is going to be two individuals who
6 were subjected to criminal charges there. I think for both
7 reasons, by way of background for the Court and also because it
8 informs his whole experience and reaction to that trauma, that
9 your Honor should take it.

10 THE COURT: My reaction to what you say is this. To
11 whatever extent this business about remediation is background,
12 background doesn't make something relevant. You're objecting
13 strenuously to evidence regarding the state of the environment
14 in the Oriente, and if background is a justification for stuff
15 coming in, well, we are going to be here two years from now.

16 In terms of just the general background of how the
17 litigation came to be, there is an abundant record of which
18 judicial notice has been taken before as to what happened in
19 what year and so forth, and that seems to me that's available,
20 and I think we are not going to get into remediation because it
21 simply doesn't appear to me to be relevant to the issues in
22 this case. I will give you a chance to respond to that. And
23 so far as it being relevant to the witness's state of mind, I
24 have no doubt that it is in some sense, but I am not sure his
25 state of mind is at issue here.

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Veiga - direct

1 MR. MASTRO: It's also the case, your Honor, and it's
2 why I raised it in that context, in the context of Mr. Veiga's
3 testimony, some of that background does inform and is relevant
4 on the question of the extortion scheme and pressure scheme to
5 gin up criminal charges against this Chevron attorney and one
6 of his colleagues. So I think that in that sense the
7 background helps inform some of that.

8 THE COURT: There is no question there was a
9 settlement between Texaco and Republic of Ecuador and with the
10 various municipalities.

11 Is there any dispute about that, Mr. Friedman?

12 MR. FRIEDMAN: No, your Honor.

13 THE COURT: Mr. Gomez.

14 MR. GOMEZ: No, your Honor.

15 THE COURT: It happened. It's a matter of public
16 record. Everybody knows what it was.

17 I understand the argument you make that the attempted
18 or maybe actual, I don't know the precise detail, criminal
19 prosecution of Mr. Veiga and others was an attempt by your
20 adversaries to circumvent or nullify or in some other way deal
21 with the fact that the Republic of Ecuador and others, at least
22 Texaco from all claims, goes to motive and it goes to the
23 extortion claim, and I understand all of that. But it all
24 starts from the fact that there was release, and that's
25 undisputed. So how we got from, I don't know, 19 whatever it

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Veiga - direct

1 was to there being a release, I just don't see the relevance of
2 it. Am I missing something?

3 MR. MASTRO: Your Honor, only for the reasons that I
4 have suggested. Your Honor never misses anything.

5 THE COURT: I wish it were true.

6 So the answer to your question, Mr. Friedman, is, no,
7 you don't have to. If I change my mind, I will surely let you
8 know.

9 MR. FRIEDMAN: So procedurally then, your Honor, would
10 it be that, and I can read them back into the record, the
11 paragraphs that deal with those issues are stricken from the
12 declarations?

13 THE COURT: That's not an appropriate way to proceed
14 at this point. You have my ruling, that is to say, we are not
15 trying who did what to whom and the process of getting from
16 whenever there was an initial issue of liability to the point
17 of there being remediation and a release. You don't have to
18 cross-examine on that.

19 Now, for me to answer yes to your question, what
20 you're asking me to do is to try on the cuff to remember every
21 single word in every single one of those paragraphs, and I
22 can't do that. I am not a computer. And so I am not going to
23 give you a yes, but in principle you have my ruling. And
24 you're protected also by the fact that you're submitting your
25 written objections and your objections are clear, and if at

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Veiga - direct

1 some point you conclude that I have done something inconsistent
2 with that part of the statement with the ruling I am giving you
3 now, believe me, I understand you know where to go about that.

4 So you're fully covered, and I am just not going to,
5 in effect, buy the big in a poke. Not that you were attempting
6 that. You were just being careful.

7 MR. FRIEDMAN: I am trying to understand the
8 procedure, your Honor. Typical for me, I understand there is a
9 routine process here, but if a witness were starting to give
10 direct testimony on one of these issues, I would object, it
11 would never come into the record in the first place.

12 THE COURT: So the whole exhibit is in subject to your
13 objections. I have already given you a ruling in principle on
14 what you say is the big issue.

15 (Plaintiff's Exhibit 3000 received in evidence)

16 MR. FRIEDMAN: Fair enough.

17 THE COURT: Mr. Mastro.

18 I move the exhibit in evidence, and I will turn the
19 witness over to Mr. Friedman.

20 THE COURT: The witness is tendered.
21 Cross-examination.

22 MR. GOMEZ: May I be heard?

23 THE COURT: Yes.

24 MR. GOMEZ: The defendants Camacho and Piaguaje have
25 an objection to this procedure of using his direct testimony in

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Veiga - direct

1 this trial for the following reasons.

2 The fact that we are doing it this way simply creates
3 more work for already understaffed, under-resourced
4 representatives for the defendants. It also deprives the
5 public of a public and complete and open trial.

6 The reason why we are in this situation, your Honor,
7 as you well know, is we have never had the resources to keep up
8 with the calendars. We have never had the resources to keep up
9 with the work. So we have a pretrial that wasn't complete
10 because we simply didn't have the time or the personnel to do
11 everything that needed to be done within the time that was
12 provided. So we are left in the awkward position of having to
13 complete tasks for the pretrial where we are actually trying
14 the case. That puts up at an enormous disadvantage.

15 Now, in terms of admitting these direct testimonies,
16 we are now going to have to prepare written objections to the
17 very testimony. Were we proceeding by the usual course, having
18 the witness testify on direct, we would be handling all of this
19 as it comes in a much more orderly fashion. And the way that
20 it's being done, it's all being put in the record, and if we
21 are not able as representatives to keep up with these written
22 objections that now have to be submitted, at the same time
23 preparing for cross-examinations that will be seen at a greater
24 rate, we won't have a fair trial.

25 I understand that the Court has used this procedure

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Veiga - direct

1 commonly, that it's common in the district, but I think the
2 Court also has to be mindful that in some situations it's
3 simply not advisable. That when the parties are so mismatched
4 in economic resources, that the Court has to recognize that
5 maybe procedures that are used commonly simply don't make sense
6 in these unique circumstances. I would like the record to be
7 clear that we are proceeding under that objection.

8 THE COURT: The objection is overruled. Mr. Gomez, we
9 have been all over this ground. The objection is so poorly
10 taken. You say it makes more work. If this were a criminal
11 trial, you would hear the direct testimony in the courtroom.
12 You would have had no discovery to speak of from nonparty
13 witnesses, none whatsoever. At the conclusion of the direct
14 testimony, you would get Jencks Act material, that is to say
15 written statements by the witness or adopted by the witness,
16 and you would then proceed with your cross-examination.

17 You instead have been provided in advance of the trial
18 with the written direct testimony of most of the plaintiff's
19 witnesses, a vast advantage over criminal cases. It is a vast
20 advantage over most civil cases. Civil cases tried with a jury
21 requires you to hear the testimony in the courtroom and then
22 proceed with the cross-examination.

23 So in terms of your saying it creates more work, I
24 categorically reject the validity of the argument. I
25 categorically reject the suggestion that it is in any way

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Veiga - direct

1 unfair. To the contrary, it gives you advantages that are very
2 uncommonly enjoyed by defendants, or for that matter
3 plaintiffs, in civil cases. And I will say quite a bit of more
4 of this in due course in a written ruling on your motion.

5 I would note also that until the last couple of days,
6 although you have been well aware that this is my practice,
7 this objection was never raised. I have made significant
8 accommodations to you, over and over again, since you took over
9 the defense, which you have been involved in for a couple of
10 years, allegedly on your own. The schedule has been pushed
11 back over and over again to accommodate assertions on your part
12 that I think were ill-founded and unwarranted simply to give
13 you the benefit of every conceivable doubt.

14 I have written before on the subject of your claim
15 that you are here alone. If that is true, that is, so far as I
16 am aware, because those who are controlling this case on behalf
17 of your clients have made a conscious decision, about which
18 they have spoken in public, not to make the resources available
19 for the New York case because they have regarded it as, and I
20 quote, a sideshow.

21 I have for months been offering you the opportunity to
22 put evidence before me to substantiate the claim that your
23 clients lack resources. You have, and I don't fault you
24 personally, you understand that, I respect you personally, but
25 those who are calling the shots on your side of the case have

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Veiga - direct

1 simply refused to do it.

2 Now, it's a matter of public record that your clients
3 raised at least 10 to 15 million dollars to finance this
4 litigation. Where it went, to whom it went, how much of it is
5 left, what other money has been raised, is a great terra
6 incognita, and that is so only because your people have chosen
7 not to disclose it.

8 Now, you asked me to accept that you are impecunious,
9 but you simply don't ever produce the evidence. That's the way
10 it is.

11 Now, you know there are lots of people with
12 meritorious cases who can't afford lawyers at all, and on the
13 civil side of our system, unless and until the Congress and the
14 state legislatures change the system, that's the way it goes.
15 I don't endorse that. I don't think it's necessarily a great
16 thing or not. It's not my job. 40 some odd of the Ecuadorian
17 plaintiffs simply elected to default in this case and not to
18 appear. The two for whom you are defending elected to defend.
19 If they and those backing them don't want to put up the money,
20 well, that's a choice. But you sit here and ask me simply to
21 accept on faith all of this.

22 Now, you asked me to do that also when one of the
23 biggest law firms in the United States has been representing
24 your clients in appellate proceedings in this case and in at
25 least a dozen, and probably two dozen other cases around the

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Veiga - direct

1 United States relating to this dispute. Maybe it's a business
2 judgment on their part that they don't want to be involved
3 here. Maybe it's a tactical decision. I have no idea. But I
4 do not find any merit in the objection you have made given the
5 lack of record you have made to support it.

6 I appreciate that you personally may be working -- I
7 assume you're working very hard on behalf of your clients, and
8 I respect that. But I am just not going to let you create a
9 completely misleading impression of what is going on here.

10 Let's proceed.

11 MR. MASTRO: Your Honor, I also wanted to clarify we
12 are moving the admission of the declaration and the exhibits in
13 the first two, but the procedure we are following with
14 objections that are coming later from Mr. Friedman I gather
15 will follow with the exhibits too.

16 THE COURT: Do we have a list of the exhibits that are
17 referred to in here?

18 MR. MASTRO: It's quite lengthy, if you want me to
19 recite it into the record.

20 THE COURT: Let's just mark it.

21 MR. MASTRO: I will mark it as Plaintiff's Exhibit
22 3000A.

23 THE COURT: So the exhibits enumerated on Plaintiff's
24 Exhibit 3000A are received subject to the discussion we had
25 earlier.

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Veiga - direct

1 OK, Mr. Friedman?

2 MR. FRIEDMAN: Yes.

3 THE COURT: Mr. Gomez?

4 MR. GOMEZ: Yes, your Honor.

5 THE COURT: All right. Thank you.

6 (Plaintiff's Exhibit 3000A received in evidence)

7 THE COURT: Your witness, Mr. Friedman.

8 MR. FRIEDMAN: Thank you, your Honor.

9 CROSS-EXAMINATION

10 BY MR. FRIEDMAN:

11 Q. Do you prefer Reis Veiga or Mr. Veiga?

12 A. My last name is Veiga.

13 Q. Mr. Veiga, I too am sorry to hear about your wife.

14 My name is Rick Friedman. I represent the Donziger
15 defendants.

16 Could you tell us, I understand from your declaration
17 you're admitted to practice law in Brazil. Are you admitted to
18 practice anywhere else?

19 A. No, sir.

20 Q. Had you ever worked in the Ecuadorian system, legal system,
21 before Lago Agrio litigation?

22 A. I am not a licensed attorney in Ecuador either.

23 Q. I guess what I am trying to get at is had you worked in
24 legal matters in Ecuador before this litigation began?

25 A. Yes. I was involved on legal matters involving the TexPet

DAF8CHE4

Veiga - cross

1 winding down operations in Ecuador since 1990.

2 Q. It sounds like since 1990 you have been one of the
3 principal lawyers involved in providing legal advice to Texaco,
4 TexPet, Chevron operations in the Oriente region?

5 A. Chevron has never operated in Ecuador and has never had any
6 involvement in the consortium Ecuador. I provided legal advice
7 and liaison with regard to TexPet's minority equity
8 participation in the consortium and winding down of several
9 litigations when the concession expired.

10 Q. After the concession expired, and the Lago Agrio litigation
11 began, you were involved in providing advice to TexPet?

12 A. The Lago Agrio litigation was filed against Chevron core in
13 2003, and I was responsible for providing day-to-day
14 supervision and liaison with our Ecuadorian litigators until
15 2009.

16 Q. As I understand it, from 2003 to 2009, you oversaw the
17 day-to-day defense of the lawsuit against Chevron in Lago
18 Agrio?

19 A. That's correct.

20 Q. You were also in charge of the day-to-day supervision of
21 the activities in Chevron's defense there, is that fair?

22 A. It's fair with regard to the legal strategy and making sure
23 that we had the logistics and providing safety work environment
24 for everyone involved in the litigation, that's correct.

25 Q. Who reported to you about those day-to-day events?

DAF8CHE4

Veiga - cross

1 A. We had several lawyers, Ecuadorian lawyers, primarily
2 lawyers working for the firm of Adolfo Callejas & Associates.
3 They were reporting directly to me as a client.

4 Q. Where were you living in that 2003-2009 time frame?

5 A. I was living in Coral Gables, Florida.

6 Q. They would report to you by e-mail, phone or letter?

7 A. They would report on phone. We had several meetings in
8 Coral Gables, meetings in Ecuador, and by correspondence as
9 well.

10 Q. Can you describe for us the type of authority you had to
11 make decisions about the day-to-day conduct of litigation in
12 Ecuador?

13 A. I was basically monitoring the day-to-day work. My
14 authority would be to establish delegation of authority in
15 Chevron, and I was reporting myself to my supervisor Ed Scott
16 in San Ramon, California.

17 Q. Can you give us an idea of the types of decisions you would
18 make on a day-to-day basis regarding the litigation?

19 MR. MASTRO: I just want to caution that the witness
20 should not disclose attorney-client communications and only
21 describe in general terms.

22 A. Without getting into any privileged communications with the
23 litigators of record, basically, what I would do is more of a
24 liaison and keeping my supervisor updated on the process and
25 the progress of the litigation. I would make sure, also, that

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Veiga - cross

1 I would attend judicial inspections in the field, which was
2 part of the production phase. One of my primary
3 responsibilities that was assigned to me was to make sure that
4 everybody would be safe, because this was a -- not your
5 ordinary litigation in an area with some safety concerns. So I
6 was having to make sure that everybody would be safe and could
7 do their work within ethics and in a more effective way.

8 Q. Why would you be the person in charge of keeping people
9 safe? Did you have some background in security or police work
10 or something?

11 MR. MASTRO: Objection to form.

12 THE COURT: Sustained as to form.

13 Q. Did you have some background in police or security work?

14 A. Not at all.

15 Q. Why were you the person in charge of keeping people safe?

16 A. Because I was the Chevron in-house attorney responsible for
17 monitoring and supervising the case, and therefore this was
18 requested from me. Because I had a civil law background, I
19 think I was chosen a lot for that reason. In my involvement
20 previously with the winding down of the TexPet participation in
21 Ecuador, because I was the point of contact, that
22 responsibility would follow me.

23 Q. So with regard to, say, the judicial inspections, would you
24 make decisions about where samples would be taken?

25 A. Not at all.

DAF8CHE4

Veiga - cross

1 Q. Would you make decisions about which experts would be
2 hired?

3 A. Not at all.

4 Q. Would you make decisions about what legal arguments would
5 be made in court?

6 MR. MASTRO: Your Honor, we are getting into a work
7 product area. I allowed the first question. This seems to be
8 objectionable.

9 THE COURT: I don't see the relevance of it to begin
10 with.

11 MR. FRIEDMAN: The relevance is there is a lot of talk
12 about what he knew -- in the declaration, there is a lot of
13 references to things he knew and didn't know and how he felt
14 and what he did. I am trying to fill out that background so I
15 understand the full picture.

16 THE COURT: Let's get to something specific.
17 Q. Who was your superior in supervising these matters?

18 MR. MASTRO: Asked and answered.

19 THE COURT: Sustained. It was Ed Scott.

20 Q. When did you stop the day-to-day supervision?

21 A. Around 2009.

22 Q. As I understand from your declaration, you still remained
23 actively involved in monitoring the litigation efforts?

24 A. That's correct, sir.

25 Q. In what sense then did things change? What was different

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Veiga - cross

1 after 2009 than before?

2 A. In 2009, I had a more day-to-day type of responsibility. I
3 would travel to Ecuador. I would get in touch very often with
4 our litigators of record, and starting in 2009, my involvement
5 has been as a member of a litigation committee that supervised
6 the whole set of lawsuits on the Ecuador matter.

7 Q. Now, you said in paragraph 13 of your declaration that part
8 of your job was to review crude outtakes?

9 A. It was not part of my job, but I did review some of the
10 crude outtakes.

11 Q. Did you say it was not part of your job?

12 A. It was not specifically my job, but I ended up providing
13 the service and providing the monitoring and supervision. I
14 ended up reviewing outtakes from crude.

15 Q. You also reviewed documents obtained in discovery,
16 arguments in public statements that were made by Mr. Donziger,
17 is that correct?

18 A. Yes, I did.

19 Q. And also discovery, public statements that were made by the
20 other Lago Agrio plaintiff attorneys in the Republic of
21 Ecuador?

22 A. Yes, I did.

23 Q. Did you also review Chevron's public statements?

24 A. Yes, some of them.

25 Q. And Chevron's court filings?

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Veiga - cross

1 A. Some of them.

2 Q. Did you also monitor activities related to this litigation
3 that took place in the U.S.?

4 A. Would you be a little more specific, please?

5 Q. Sure. For example, if Mr. Donziger or Chevron made
6 statements in the United States, would you have monitored those
7 as well as the ones that took place in Ecuador?

8 A. Some of them, not a lot during my day-to-day supervision of
9 the litigation.

10 Q. I am going to ask you to look at Plaintiff's Exhibit 853.

11 MR. FRIEDMAN: Your Honor, if I could just have a
12 minute to pull my book out?

13 THE COURT: Sure.

14 Q. I think, Mr. Veiga, I don't know, I think you might have a
15 copy of 853 with the declaration that Mr. Mastro handed you,
16 but maybe not?

17 A. I don't.

18 THE COURT: Do you have a copy for me while my deputy
19 is out of the courtroom?

20 MR. MASTRO: Your Honor, if I may approach, I can give
21 a complete set.

22 MR. FRIEDMAN: Could I ask if you have 853 yet?

23 THE COURT: Not yet, but I am hopeful.

24 MR. FRIEDMAN: I don't understand the technical
25 things.

DAF8CHE4

Veiga - cross

1 THE COURT: I don't understand it either right now.
2 The man who understands it is off doing something else.

3 MR. FRIEDMAN: We are trying to get the screens
4 switched back so we can show exhibits. Maybe we have to wait
5 for him to return.

6 THE COURT: Maybe not.

7 MR. FRIEDMAN: Since there is no jury, is there any
8 problem with showing these on a screen for the admission
9 process of the exhibits?

10 THE COURT: When the electronics are all in gear, then
11 it can be shown to the witness first without it being generally
12 available, and then when it's received, we will hit the button
13 and if everything works according to plan, it will then be
14 visible generally. But there is some other business going on
15 on my docket today so my deputy is busy.

16 So we have Plaintiff's Exhibit 853 for identification.

17 Mr. Veiga, do you have it before you?

18 THE WITNESS: Yes, I do.

19 THE COURT: Mr. Friedman, do you have a question?

20 MR. FRIEDMAN: I do. Thank you, your Honor.

21 BY MR. FRIEDMAN:

22 Q. Mr. Veiga, do you recognize this? I guess it's a
23 transcript of President Correa from April 28, 2007. It's
24 referenced in your declaration.

25 A. It looks like one of the presidential addresses.

DAF8CHE4

Veiga - cross

1 MR. FRIEDMAN: Your Honor, if you would look at
2 paragraph 3, this gets to the issue Mr. Mastro alluded to
3 earlier. I didn't want to get into this area without talking
4 to the Court first.

5 THE COURT: I don't know where you're going with the
6 exhibit generally, but I haven't heard an objection yet.

7 Q. Mr. Veiga, if you would look at the third paragraph of this
8 statement, the third line down, do you see where it says, And
9 we also have people from Petroecuador in 1998, a certificate
10 was signed stating that everything was remediated?

11 A. Yes, I see that.

12 Q. Was a certificate signed saying everything was remediated?

13 A. There was a --

14 THE COURT: This is exactly what I thought we were not
15 going to do.

16 MR. FRIEDMAN: This is the part that Mr. Mastro
17 referred to that we have got the big remediation issue, and
18 then we have a smaller issue that relates to the criminal
19 charges that were filed against Mr. Veiga, and I am trying to
20 get to that point without getting to the whole thing.

21 THE COURT: What is that point from what your point of
22 view?

23 MR. FRIEDMAN: From our point of view, your Honor, the
24 allegations in the declaration are that the criminal charges
25 were baseless, and what I am trying to establish is that they

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Veiga - cross

1 were not baseless.

2 THE COURT: So we are going to try an Ecuadorian
3 criminal case now here, right?

4 MR. MASTRO: That isn't the allegation in our lawsuit,
5 your Honor. We did not offer this document for the truth of
6 the matters asserted. He objected to talking about this
7 subject at all. What we have argued is that those criminal
8 charges were brought for ulterior reasons -- for extortion, as
9 a sham, and for other reasons. That's what we have argued,
10 your Honor. The evidence will show the collusion between
11 Donziger's team and the Ecuadorian government to gin up those
12 charges. That's why we offered it.

13 THE COURT: Mr. Friedman.

14 MR. FRIEDMAN: Here is the problem. A central part of
15 their RICO case is that baseless criminal charges were filed.
16 It's all through their paperwork and it's through this
17 declaration. And so should we try to the Ecuadorian case? Of
18 course not. But the issue of whether these charges are
19 baseless or not goes to the core of this declaration.

20 MR. MASTRO: Actually, your Honor, just as we
21 explained to the Court what we meant by sham litigation, it is
22 what we mean by the sham criminal charges, and those are the
23 words that Mr. Veiga uses throughout his declaration -- sham,
24 bogus. He is talking about the ulterior motives behind the
25 action that have nothing to do with what this gentleman is

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Veiga - cross

1 talking about. We do not use that word that he has just used
2 about this subject. We have been very mindful of the Court's
3 admonitions about not getting into the merits.

4 MR. FRIEDMAN: Your Honor, the kind of core of this
5 issue is they are saying that, and I will pull out the
6 paragraphs, but basically that this was a baseless, I think
7 they might have used the word fraudulent as well, criminal
8 prosecution. They are using very strong language about the
9 lack of merit to these criminal charges, and they are saying
10 defendants were behind these charges and that they were
11 baseless.

12 Well, that's a pretty serious accusation. And if they
13 are baseless, that supports Chevron's position. If they are
14 not baseless, if they were founded in good faith, and
15 regardless of Mr. Donziger's hope that good things would come
16 from them, the issue is whether this was some sort of
17 inappropriate action. The RICO law is quite clear, and I am
18 certainly no expert on RICO law, but the RICO law is pretty
19 clear that someone can institute lawsuits, criminal charges and
20 have a bad subjective motive, but if objectively they had the
21 right to do it, objectively they had the right to do it, it
22 doesn't matter what their subjective motives are.

23 So we are back to objective basis for these criminal
24 charges.

25 MR. MASTRO: Actually, your Honor, for extortion, it's

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Veiga - cross

1 often the case that someone extorts another with truthful
2 information, but does it for the improper purpose of coercion.
3 It has nothing to do with that. It has to do with the fact
4 that whatever was being pursued was to extort, pressure, jam
5 up, coerce Chevron into paying them off. That's the
6 allegation.

7 MR. FRIEDMAN: If I file a lawsuit against Chevron for
8 a client that has been run over by a Chevron oil truck, and my
9 motive is to force Chevron to pay my injured client, that's not
10 a RICO claim. There are a lot of different types of extortion.
11 But one that is not extortion, and I can get you some cites
12 over the noon hour, what is not extortion is to exercise a
13 right that you have a right to do.

14 THE COURT: If you see your neighbor out with a woman
15 other than his wife, do you have a right to state that fact?

16 MR. FRIEDMAN: Well, I do have the right to state that
17 fact.

18 THE COURT: And if you go to your neighbor, who you
19 saw out with a woman other than his wife, and say, pay me money
20 or else I am going to tell your wife you were out with this
21 other lady, is that extortion?

22 MR. FRIEDMAN: I don't know if that's extortion, but I
23 know what is not extortion, which is to file a claim that you
24 have a legal right to make.

25 THE COURT: The objection is sustained.

DAF8CHE4

Veiga - cross

1 MR. FRIEDMAN: So I am clear, your Honor, are we going
2 to be allowed to, so I don't waste the Court's time--

3 THE COURT: You objected to getting into the whole
4 subject of the remediation, and I sustained your objection, and
5 now I am holding you to it, in addition to ruling on grounds of
6 relevance and under Rule 403. Not to mention the fact that
7 President Correa's speech is not admissible for the truth of
8 the matters asserted, which is among the ways you appear to be
9 trying to use it.

10 MR. FRIEDMAN: I won't argue with the Court. I
11 understand your ruling.

12 Is 853 still in evidence then?

13 THE COURT: We established the procedure earlier.
14 It's there for now.

15 MR. FRIEDMAN: Fair enough.

16 THE COURT: I understand one way to try this case
17 would be to spend three months in this courtroom, paragraph by
18 paragraph, document by document, and that's just not the way we
19 are going to try it.

20 MR. FRIEDMAN: I am not asking you to do that, your
21 Honor.

22 THE COURT: I appreciate that.

23 MR. MASTRO: Just for future reference, it's the
24 Second Circuit's decision in *United States v. Jackson*, 180 F.3d
25 5566 (2d Cir. 1999). Truth is not a defense to a charge of

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Veiga - cross

1 extortion.

2 MR. FRIEDMAN: That wasn't my argument.

3 THE COURT: I didn't exactly think it was.

4 Thank you, Mr. Mastro.

5 Let's move along, folks.

6 MR. FRIEDMAN: I am trying, your Honor.

7 THE COURT: I know you are.

8 BY MR. FRIEDMAN:

9 Q. Mr. Veiga, during the time you were supervising day-to-day
10 operations in Ecuador, was it permissible for lawyers to have
11 ex parte contacts with judges relating to cases that were
12 before those judges?

13 MR. MASTRO: Objection to form, your Honor, and it
14 calls for a legal conclusion.

15 THE COURT: Sustained.

16 Q. During the time you were supervising the day-to-day
17 operations of the Chevron legal team in Ecuador, was it your
18 understanding that ex parte contacts were proper relating to
19 the subject matter of the litigation?

20 MR. MASTRO: Objection to form and calls for a legal
21 conclusion.

22 THE COURT: Sustained.

23 Mr. Friedman, if that question or some facsimile of it
24 ultimately is significant in this case, it's a question of law
25 which under Rule 44.1 of the Rules of Civil Procedure is for me

DAF8CHE4

Veiga - cross

1 to decide. Both parties have submitted more proposed expert
2 testimony than you can shake a stick at on that subject. We
3 are not going to get that question from witnesses who insofar
4 as the law of Ecuador is concerned are lay witnesses.

5 Move on, please.

6 MR. FRIEDMAN: I was offering it two ways. Under
7 44.1, it is permissible to elicit testimony from a witness
8 about the law.

9 THE COURT: Yes. And at the final pretrial conference
10 I said I would take all of your written submissions on it, and
11 if ultimately I concluded it was appropriate to hear any expert
12 testimony, I would let you know. I am also, based on the
13 evidence you elicited, not accepting this witness as an expert
14 on Ecuadorian law.

15 MR. FRIEDMAN: The second basis, your Honor, would go
16 to his state of mind, Chevron's state of mind, as to the
17 propriety of ex parte contacts. The reason being that both
18 parties in Ecuador were in a hard fought, bitter litigation,
19 and accusations about impropriety on both sides were made down
20 there and are being made down up here. And to understand
21 Chevron's position, their state of mind with regard to ex parte
22 contacts I think is important for the Court to be able to make
23 a decision.

24 MR. MASTRO: Obviously, we object to that on multiple
25 grounds, relevance, calls for a legal conclusion.

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Veiga - cross

1 THE COURT: Maybe if you spoke more slowly, I would
2 understand more of it.

3 MR. MASTRO: We object to that both on relevance
4 grounds, to speculate on Chevron's state of mind. It calls for
5 a legal conclusion.

6 THE COURT: It doesn't call for a legal conclusion.
7 You could bring in somebody whose job at Chevron is to prepare
8 the mashed potatoes in the cafeteria and ask their opinion, and
9 if under the laws of agency that's attributable to Chevron, it
10 goes to Chevron's state of mind. Now, obviously, it wouldn't
11 be, but I am making a broader point.

12 Look, I will let him answer the question as you put it
13 for whatever it proves to be worth.

14 Read the question back to the witness.

15 (Record read)

16 A. My understanding is that no ex parte meetings would be
17 appropriate to discuss any substantial matter within the
18 litigation.

19 Q. That would be true of Chevron as well as of the plaintiffs?

20 A. Yes, sir.

21 Q. What was your understanding about what would be a
22 substantial matter versus an unsubstantial matter?

23 A. Substantial matters usually go to the merits of the case as
24 opposed to a mere procedural schedule matter.

25 Q. Now, from watching the crude outtakes and the various other

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Veiga - cross

1 things, it sounds like the hearings that were conducted both in
2 the courthouse and out in the field involved -- let me start
3 over. I apologize.

4 How was the record kept, as you understood it, the
5 official record of the Ecuadorian court?

6 THE COURT: This is a matter of law. He is not an
7 expert on that.

8 MR. FRIEDMAN: I understand the law part, but I think
9 it's also a fact part in the sense of what the practice was.

10 THE COURT: You're asking him to give you his
11 understanding based on what he watched in the crude outtakes
12 and, quote, various other things unspecified, close quote?

13 MR. FRIEDMAN: I could probably ask a better question.

14 THE COURT: I bet you can.

15 Q. Mr. Veiga, is it correct that out in the field in these
16 court hearings there was no court reporter?

17 A. Are you referring to the judicial inspection proceedings?

18 Q. Yes. The judicial inspection proceedings.

19 MR. MASTRO: If he knows.

20 THE COURT: Of course.

21 A. To the extent of my personal observation in the judicial
22 inspections that I attended, there was a court reporter.

23 Q. Was the court reporter taking notes of what took place?

24 A. The court reporter would take notes and later on would
25 confer with both attorneys to check if the transcripts would be

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Veiga - cross

1 accurate.

2 Q. The transcripts that were created, they were not like a
3 transcript we will see from this court proceeding here today
4 where you have question answer, question answer, but they are
5 more general sort of summary sheets, is that fair?

6 A. I would not be able to respond to this question. I am not
7 so familiar with how this procedure works.

8 Q. But you were familiar that at the end of the day, the
9 parties would get together with somebody and create a record of
10 some sort?

11 A. I don't think that's accurate. I think the court reporter
12 would have his or her own records. She would basically
13 finalize and type, and then she would ask the attorneys for
14 both parties and experts that have attended to the judicial
15 inspections to verify for accuracy.

16 Q. Maybe I can cut off a line of questioning here.

17 Were you ever involved in the service of documents on
18 the court?

19 A. No, I was not.

20 THE COURT: We are going to break here for another
21 matter and for lunch. I do before we break want to say one
22 more thing in relation to Mr. Gomez's objection, which I
23 neglected to address.

24 Mr. Gomez asserted that there was a problem with the
25 procedure of taking the direct testimony in writing vis-a-vis

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Veiga - cross

1 public trial. That point would be well taken if the material
2 did not become part of the public record promptly. That
3 material will be become part of the public record promptly.
4 The parties are to report back to me in the morning, after
5 conferring with each other, about how they propose to put the
6 direct testimony, after its received, into the publicly
7 available record.

8 Thank you. I will see you at 2:00. We won't normally
9 take as long a break as this.

10 MR. MASTRO: We do have our next witness here. If Mr.
11 Friedman, who has previously declined to say so, can give us
12 some feel of how long this witness will last.

13 THE COURT: How about it, Mr. Friedman?

14 MR. FRIEDMAN: If I could take a look at my notes, I
15 will tell Mr. Mastro. A bunch of questions that I was going to
16 ask are no longer going to be asked.

17 THE COURT: Thank you. I look forward for great
18 cooperation.

19 (Luncheon recess)
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21
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23
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Veiga - cross

AFTERNOON SESSION

2:05 p.m.

(In the robing room; Mr. Mastro, Mr. Friedman,
Mr. Gomez, and Mr. Donziger present)

THE COURT: I asked you to come in because it was
reported to me that a man wearing a leather jacket who was
seated next to Karen Hinton in the spectators' section earlier
this morning and later was in the cafeteria at lunch hour with
Mr. Piaguaje approached one of my law clerks and it was quite
unsettling and he identified himself as Mitch. And I would
like it to stop. I don't know who it was. I'm not asking.
Okay.

(In open court)

THE COURT: Okay. Let us proceed.

MR. MASTRO: Your Honor, I just wanted to say before
we started that we have a break-through moment where protocol
has been agreed upon by counsel for posting an ECF as soon as a
witness's declaration --

THE COURT: Could we move with the testimony. I'm
glad there's a breakthrough.

MR. MASTRO: Thank you.

THE COURT: Let's move.

MS. FRIEDMAN: Thank you, your Honor.

Your Honor, what I was hoping might speed things along
is if my assistant, Mr. Taylor, could hand documents either to

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Veiga - cross

1 your clerk or to the witness. I've got one set here. He's got
2 another set. Would that work or no?

3 THE COURT: I'm a little confused. We have this whole
4 presentation system and we now have the genius who operates it,
5 Andy. So why don't we do that.

6 MS. FRIEDMAN: This would be to hand the original to
7 the witness, your Honor.

8 THE COURT: Is there --

9 MS. FRIEDMAN: You're thinking he doesn't even need
10 that.

11 THE COURT: Right.

12 MS. FRIEDMAN: Okay. All right. That's fine.

13 THE COURT: Unless there's something I'm missing.

14 MS. FRIEDMAN: No, I think that will work fine.

15 THE COURT: Okay.

16 BY MS. FRIEDMAN:

17 Q. Mr. Veiga, when the original Ecuadorian case was filed here
18 in the United States back in the early nineties -- do you have
19 in mind the time frame I'm talking about?

20 A. Yes, sir.

21 Q. All right. When that was filed, did Chevron work with
22 Ecuador, the Republic of Ecuador, to put pressure on the U.S.
23 court to dismiss the case?

24 A. Chevron was not a defendant in that case.

25 Q. Did Texaco work with the Republic of Ecuador to put

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Veiga - cross

1 pressure on the U.S. court to dismiss the case?

2 MR. MASTRO: Objection, your Honor.

3 THE COURT: Sustained as to form.

4 Q. Let me show you, if I could, Mr. Veiga, Exhibit DX376.

5 MS. FRIEDMAN: And, your Honor, I'd move into evidence
6 Exhibit 376. I don't think there's any authentication issue.

7 THE COURT: Is there any objection to 376?

8 MR. MASTRO: Your Honor, there is. It's hard to read
9 the handwriting and it's just a transmittal page.

10 THE COURT: I assume we're not interested in the
11 transmittal page, right, Mr. Friedman?

12 MS. FRIEDMAN: Well, in a sense we are because it
13 shows, it comes from the corporate communications division of
14 Texaco, if I'm reading it correctly, federal government affairs
15 from Texaco. So that's the significance of the cover page,
16 your Honor.

17 THE COURT: I'm smiling because I'm trying to see what
18 comes behind the cover page.

19 MS. FRIEDMAN: Fair enough.

20 THE COURT: And it's at a 90-degree angle to
21 horizontal and it's got a Post-it note obscuring part of it so
22 it's not too helpful. But maybe I'll look over here.

23 MS. FRIEDMAN: I could hand you, your Honor.

24 THE COURT: Could somebody put this -- thanks.

25 So what's the objection?

DAFLCHE5

Veiga - cross

1 MR. MASTRO: Your Honor, I think we should see if the
2 witness can identify it and, second, I don't see how this could
3 possibly be relevant in any event.

4 THE COURT: Well, let's start with the first.

5 Mr. Friedman.

6 MS. FRIEDMAN: Your Honor, this is a, I believe --
7 and, again, I'm a little shaky ground on the procedural history
8 of this case. But my understanding is the CA Bates number
9 indicates this was produced by Chevron in a litigation. The
10 fax corporate transmittal sheet is from Texaco. I don't think
11 the witness himself needs to necessarily recognize the document
12 for it to be admissible if there's no authenticity objection.

13 THE COURT: Is there any dispute about authenticity?

14 MR. MASTRO: Your Honor, even accepting authenticity,
15 I think this is clearly irrelevant to this case. Talking about
16 completely different litigation involving different parties,
17 some overlap, but different parties and very different claims.
18 What happened in the Southern District and back and forth in
19 the Southern District in a claim by individuals for individual
20 claims seeking class action treatment in the United States is
21 not the subject of our lawsuit. It's about what happened in
22 Ecuador later when a wholly new action for community harms is
23 brought against Chevron alone. So this is totally irrelevant.

24 THE COURT: Mr. Friedman.

25 MS. FRIEDMAN: Your Honor, of course, the first action

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Veiga - cross

1 and the second action have a lot of overlap. And we're really
2 looking at -- I understand Chevron would like to limit the
3 inquiry to a particular period of time, but we're not just
4 talking about a chronological time period. We're also talking
5 about the propriety of doing certain things such as there's
6 lots of allegations in the complaint and in some of these
7 witness declarations about improperly trying to pressure
8 governments to do things to influence cases, and here we have
9 Chevron doing exactly that same thing. So it goes to the
10 unclean hands defense.

11 But I think more importantly than unclean hands, your
12 Honor, it goes to it's essentially an admission by conduct.
13 Chevron can't take the position pressuring government officials
14 is improper when it's doing it itself.

15 MR. MASTRO: And I just want to say for the record,
16 your Honor, it doesn't show any such thing. But it's totally
17 irrelevant whether there was communication with the Republic of
18 Ecuador about a separate lawsuit involving individual claims
19 when, as your Honor is well aware, there was settlement and
20 release issue as well.

21 But this is -- it doesn't -- it's totally irrelevant
22 to this lawsuit. And your Honor previously ruled that only
23 discovery from 2000 on would apply as to this lawsuit. I mean.

24 THE COURT: The objection is sustained, both as to
25 relevance and 403. Whatever might have happened in 1993 in

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Veiga - cross

1 this respect is simply too far afield and we're not going
2 there.

3 MS. FRIEDMAN: Your Honor, I neglected to mention I do
4 see that Mr. Veiga was a recipient of this fax.

5 THE COURT: Well, maybe so, maybe not.

6 MS. FRIEDMAN: I'll move on.

7 BY MS. FRIEDMAN:

8 Q. Mr. Veiga, would you look at paragraph 47 of your
9 declaration. Have you been able to find that?

10 A. Yes, sir.

11 Q. All right. And you're talking here about watching
12 Mr. Donziger on a number of occasions.

13 Did any of those occasions happen after 2009?

14 A. If you're referring to the second sentence where I saw
15 Mr. Donziger at a number of judicial inspections, the answer is
16 no. I did not attend any judicial inspections after 2009.

17 Q. All right. Did you attend any in 2008?

18 A. I don't remember. I may.

19 Q. All right. So in your best memory as you sit here today,
20 when is the last time you saw Mr. Donziger directing people at
21 judicial inspections?

22 A. I believe, I believe the last judicial inspections I
23 attended were around the end of 2006, beginning of 2007, but
24 it's just part of my recollection.

25 Q. All right. Can you look then at Defendant's Exhibit 668.

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Veiga - cross

1 Can you tell us who William T. Irwin is?

2 A. Mr. Irwin is an employee of Chevron who works in our
3 Washington, D.C. public affairs office.

4 Q. And are you aware of what his job is, what his job duties
5 are, generally speaking, in the public affairs office?

6 A. I'm generally familiar with his duties.

7 Q. And what are they?

8 A. He basically monitors Chevron's, Chevron's presence in
9 several countries and monitors progress of litigations and this
10 kind of work.

11 Q. And there's a reference in the middle of the page to saying
12 please forward this to Ricardo Veiga, and then up at the top it
13 appears that it was sent to you.

14 Do you recall that?

15 A. I don't particularly recall that, but it may very well have
16 been sent to me.

17 MS. FRIEDMAN: Your Honor, I'd move for admission of
18 668.

19 MR. MASTRO: Your Honor, there's hearsay in the
20 document and I also object on relevance grounds.

21 THE COURT: What's the hearsay?

22 MR. MASTRO: Well, it talks about, it talks about what
23 she said in the bottom part of the message from Sullivan.
24 There's what other people said and not to him.

25 THE COURT: What's the purpose of the offer,

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Veiga - cross

1 Mr. Friedman?

2 MS. FRIEDMAN: Your Honor, and I could lay a better
3 foundation if I need to.

4 THE COURT: Go ahead.

5 MS. FRIEDMAN: The purpose of the offer is to indicate
6 that Chevron was meeting with the minister of foreign trade
7 about the lawsuit in Ecuador and the other things that are in
8 the email as well.

9 MR. MASTRO: He is offering it for the truth of the
10 matters asserted, your Honor, and it has to do with the hearsay
11 from the particular individual referred to in the bottom part
12 of the email. Not a direct communication with Mr. Veiga.

13 MS. FRIEDMAN: If I could, your Honor, I'll ask a
14 couple more questions to lay a function.

15 THE COURT: Go ahead.

16 Q. Mr. Veiga, who is Jim Sullivan, SCO Ecuador?

17 A. Mr. Sullivan, my recollection is that Mr. Sullivan was the
18 commercial attache at the U.S. Embassy in Quito.

19 Q. And then you've told us who Mr. Irwin is. He is the -- I
20 forget the title, but he works for Chevron in public relations?

21 A. Public affairs.

22 Q. Public affairs, I'm sorry.

23 On the CC it says Mr. or Mrs. Saxton. Who is that?

24 A. I can't see from here.

25 Q. I'm sorry. Do you see it?

DAFLCHE5

Veiga - cross

1 A. Mary Beth Saxton. Mary Beth Saxton, my recollection is she
2 was an employee of public affairs in the Coral Gables office.

3 Q. And understanding that you don't have a specific
4 recollection of receiving this email, was it uncommon for you
5 to get correspondence about what the foreign minister was doing
6 with respect to the Ecuador lawsuit?

7 A. I received several emails with regard to Chevron's position
8 that the Republic of Ecuador, Petroecuador had to honor their
9 agreements. To that extent, I did receive several emails with
10 regard to that subject.

11 Q. All right. And whether it was in this email or in another
12 communication, did you receive suggestions from the minister of
13 foreign trade in Ecuador that Texaco and/or Chevron participate
14 in parallel negotiations with the indigenous people who filed
15 the suit?

16 MR. MASTRO: Objection, your Honor, hearsay.

17 THE COURT: Overruled.

18 A. I don't have any personal knowledge or recollection about
19 this kind of suggestions. We did spend time and had several
20 meetings, some of them I participated, in which Chevron was
21 trying to assure that the obligations assumed by Petroecuador
22 and the Republic of Ecuador would be honored. And we try to
23 resolve this amicably in order to avoid an arbitration that we
24 end up initiating against the republic. So there were several
25 meetings in which we discussed the lack of compliance by the

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Veiga - cross

1 Republic of Ecuador and Petroecuador about their part of the
2 bargain.

3 Q. But the case that was filed in Ecuador, the one that's
4 being referred to here, is filed not on behalf of the Republic
5 of Ecuador but on behalf of indigenous people that live in the
6 area; is that right?

7 A. The case, Lago Agrio, was basically claims for diffuse
8 rights and rights of the collectivity, general environmental
9 claims. In those claims, and our position has been they have
10 been settled by the Republic of Ecuador and Petroecuador, which
11 was the majority partner in the consortium. It was supposed
12 and assumed responsibility to remediate a number of sites that
13 were corresponding to their equity position in the consortium,
14 which they failed to my knowledge to remediate and were being
15 sued for the things that the republic assumed they were
16 supposed to do. So that was basically the relationship with
17 the liability that might arise out of the Lago Agrio case.

18 Q. And think I understand your position on that.

19 My question is if that's the case, why would you
20 undertake parallel negotiations with the indigenous people?

21 A. We did not maintain any parallel negotiations with the
22 indigenous people that I know.

23 Q. Okay.

24 MS. FRIEDMAN: Your Honor, I move into evidence 668.

25 MR. MASTRO: Still objection hearsay, your Honor. The

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Veiga - cross

1 lower part of the email chain that Mr. Veiga was not on is all
2 hearsay. It's offered for the truth the matter asserted.

3 THE COURT: What about it, Mr. Friedman?

4 MS. FRIEDMAN: Your Honor, it is offered not --
5 although my questioning, of course, got to some of the issues
6 that were the truth of the matter, it is a reflection of the
7 communication going back and forth between -- the Court is
8 aware from the complaint and from numerous other documents in
9 this case that Chevron's position has been that it's improper
10 for the plaintiffs and their lawyers to have been communicating
11 with officials in the Republic of Ecuador on the subject matter
12 of this case. That runs through all the paperwork. Here is an
13 example.

14 THE COURT: That's an obscure statement of their
15 position. I'm sure they'll have several statements of your
16 position from time to time that you may disagree with as well.

17 MS. FRIEDMAN: Sure. So, yeah. I don't want to
18 overstate it. But there are I think it's fair to say both in
19 the complaint and in the witness declarations assertions by
20 Chevron and its witnesses that it was improper to have contact
21 with Republic of Ecuador representatives, governmental
22 representatives, about the subject matter of the case. And
23 here we have evidence that that was clearly going on by Chevron
24 as well. At this point that's the limited purpose of seeking
25 admission. It's really as simple as that.

DAFLCHE5

Veiga - cross

1 MR. MASTRO: Your Honor, I was just going to say our
2 position is it's improper to have improper context. This is
3 offered for the substance of the communication, what was said
4 for the truth of the matter said. That makes it classic
5 hearsay.

6 THE COURT: Look, for what it's worth, I'll take it
7 without making an issue of the hearsay for the moment.

8 (Defendant's Exhibit 668 received in evidence)

9 MS. FRIEDMAN: Thank you, your Honor.

10 THE COURT: Go ahead.

11 BY MS. FRIEDMAN:

12 Q. Mr. Veiga, I'm going to switch topics now if I could.

13 I want to ask you about some witnesses that Chevron --
14 well, maybe just so you and I are communicating, in the
15 litigation in Ecuador, was Chevron a party?

16 A. You're talking about the Lago Agrio?

17 Q. Yeah.

18 A. Chevron was the only defendant in that case.

19 Q. When we talk about Chevron's positions, we're talking
20 about -- well, I think that's all we need.

21 So Chevron hired a Dr. Alvarez, a Dr. Mackay, and a
22 Dr. Hinchey as expert witnesses to provide information to the
23 court; is that correct?

24 A. The -- there were several experts that both parties
25 nominated to the court as part of judicial inspections. And

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Veiga - cross

1 those nominations go to the judge, and the judge would then
2 either accept or not.

3 To my recollection, the judge have accepted all the
4 nominations by both parties. So to the extent that these
5 individuals were nominated by Chevron as their technical
6 consultant for the judicial inspections, that's true.

7 Q. All right. Just so I make sure the record is clear,
8 sometimes Chevron would nominate experts, but before those
9 experts could provide information to the court they had to be
10 approved by the court; is that right?

11 A. There was a procedure for them to be sworn in and finally
12 selected by the court to work and attend and participate as
13 members of the judicial inspection procession.

14 Q. And, likewise, plaintiffs would sometimes nominate experts
15 that would then have to go through that same process?

16 A. In my recollection is that the plaintiffs did the same
17 process for I would say most of the judicial inspections.

18 Q. And so among others, I know there were many, but among
19 others, Chevron hired or nominated Dr. Alvarez, Dr. Mackay, and
20 Dr. Hinchey to provide expert information to the court?

21 A. Sitting here today, my recollection is that they were some
22 of them, but I just don't remember all the names.

23 Q. All right. If an expert was nominated by Chevron to
24 provide information to the court, who would pay for that
25 expert?

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Veiga - cross

1 A. Usually each party pays the expense and the fees for their
2 respective technical consultants.

3 Q. All right. And with the technical consultants that Chevron
4 nominated and got approved by the court, you would meet with
5 those experts, not you personally, but Chevron lawyers would
6 meet with those experts?

7 A. Yes, I would say so.

8 (Continued on next page)

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Veiga - cross

1 Q. And they would discuss the substance of the case and the
2 substance of the expert's opinions in those meetings?

3 MR. MASTRO: Objection, your Honor. He is being asked
4 hearsay. He didn't say he was the person who as at any such
5 meetings or involved in those conversations.

6 THE COURT: Certainly it's not asking for any hearsay.
7 You want to rephrase the question, Mr. Friedman?

8 MR. FRIEDMAN: I will, your Honor. Thank you.

9 Q. As the supervisor of the day-to-day operations of the
10 litigation in Ecuador, the Lago Agrio litigation, were you
11 informed of meetings between Chevron lawyers and Chevron
12 nominated experts?

13 A. Yes. My only caveat is that the information would come
14 from my conversations with counsel. So I am just -- there
15 might be areas that I will not be able to get into.

16 Q. In other words, your counsel, and I am not going to ask you
17 for the substance, but your counsel would meet with experts
18 that had been nominated by Chevron and approved by the court,
19 your lawyers would meet with those experts, discuss their
20 opinions, their reports, their future reports, and would report
21 back to you to keep you up-to-date on what was going on?

22 THE COURT: The question is highly compound.

23 MR. FRIEDMAN: I will break that down.

24 Q. Your lawyers would report to you about meetings with
25 experts nominated by Chevron, is that correct?

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Veiga - cross

1 MR. MASTRO: Objection. Asked and answered.

2 A. Yes.

3 Q. They would report to you about reports the experts were
4 going to write in the future?

5 THE COURT: Could we work on the problem of the
6 subjunctive here? Are we asking for what the man remembers or
7 what he supposes would have happened if the world had been
8 working the way he had hoped?

9 MR. FRIEDMAN: I am trying to ask what he remembers
10 about the process.

11 THE COURT: That would be a better way of asking the
12 question if I could kindly suggest.

13 MR. FRIEDMAN: I will be happy to take the suggestion.
14 Q. Mr. Veiga, I am asking about the process by which you would
15 learn about what your lawyers were doing, and I am asking
16 specifically about their interactions with the experts. OK?

17 MR. MASTRO: I caution the witness not to --

18 THE COURT: Just ask another question, please.
19 Let me help out.

20 MR. FRIEDMAN: That would be great.

21 THE COURT: Were there occasions when your lawyers
22 reported to you about the lawyers' interactions with experts
23 nominated by Chevron for the judicial inspection process?

24 THE WITNESS: Yes, your Honor.

25 THE COURT: Next question, please, Mr. Friedman.

DAF8CHE6

Veiga - cross

1 Q. Would they tell you about what they expected the experts to
2 put in their reports?

3 THE COURT: Did they tell you about that?

4 Q. Did they tell you about what they expected the experts to
5 put in their reports?

6 A. Obviously not.

7 Q. Did they tell you about what they expected the experts'
8 opinions to be?

9 A. No.

10 Q. So when the experts' opinions came out, those were a
11 complete surprise to you?

12 A. They were the opinions of the experts. It's difficult to
13 say they would be a surprise because we had our own views of
14 certain issues at stake. Example, if the inspection was at a
15 site that has been operated by Petroecuador, at least I expect
16 a certain result, an open pit would have no record of being
17 operating that site. So it was not a surprise, but I obviously
18 would not know what the final position of any expert would be.

19 Q. What was the purpose then of your lawyers meeting with
20 these experts?

21 A. The main purpose was -- I don't know if you have experience
22 in the judicial inspection process. It's a process, a
23 procedure that is very common in civil law litigation. Usually
24 it's done to request the inspection of a certain evidence in a
25 closed environment. Example, I want the judge to inspect the

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Veiga - cross

1 books of a company. I know what the subject is of the
2 inspection. I know where the books will be. It's a closed
3 environment. It's very well defined.

4 In this case, this was very different. The parties
5 had requested judicial inspections in an open environment. So
6 if you could imagine, you go to an industrial facility that is
7 being operated by another company in an open area. So you have
8 to define, what is it that you're going to inspect? What are
9 you going to look for? What is it you're going to evaluate?
10 So a lot of the communications was basically logistically to
11 see what is it we are going to look and how you go about to
12 define where a pit was located if the pit was closed and the
13 rain forest has already reclaimed that area. You need to find
14 the pit first. You need to have coordinates of the pit. You
15 need how to delineate the pit.

16 So a lot has been in preparation of this procedure and
17 the lawyers, obviously, will not know exactly how to proceed if
18 they couldn't have this kind of communication. I believe that
19 the same was true for the plaintiff's experts and the
20 plaintiff's lawyers.

21 Q. So your lawyers talked to your nominated experts about
22 those kinds of issues, and that would get reported back to you?

23 A. Not always.

24 Q. Not always. But on occasion?

25 A. Occasionally, yes.

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Veiga - cross

1 Q. Now, when that happened, when say an expert like
2 Dr. Alvarez or Dr. Mackay interacted with your lawyers around
3 the issues that you just described as being paid by Chevron, do
4 you still consider them to be independent experts?

5 MR. MASTRO: Objection.

6 THE COURT: Sustained.

7 MR. FRIEDMAN: Could I have the basis for the
8 objection?

9 THE COURT: The witness's opinion isn't relevant.

10 Q. Were experts in that context represented to the court as
11 being independent experts?

12 MR. MASTRO: Objection, your Honor. Again, this is
13 the joint inspection experts nominated by one party for
14 another. I object to the question, your Honor.

15 THE COURT: And the ground, Mr. Mastro, is?

16 MR. MASTRO: It's asking for his opinion.

17 THE COURT: No, it's not.

18 If you know. Answer the question, sir.

19 A. The judicial inspection process, I had two technical
20 consultants or experts nominated by both parties. And the
21 court would also nominate in this case five settling experts
22 themselves. And the system worked, each party would pay for
23 its own technical consultant. The five settling experts' fees
24 and expenses will be shared by both parties. And as a matter
25 of law, everyone working on a judicial inspection, or issuing a

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Veiga - cross

1 report to the court, has judiciary duty to the court, needs to
2 be impartial, neutral, and truthful.

3 Q. And that would include the technical consultants that you
4 just described, the ones that were nominated by Chevron?

5 A. Yes, sir.

6 Q. They have an obligation to be impartial, objective, and
7 truthful?

8 A. As the expert nominated by the plaintiffs as well.

9 Q. It was common to refer to those technical consultants or
10 experts as independent experts, wasn't it?

11 MR. MASTRO: Objection.

12 THE COURT: Sustained.

13 MR. FRIEDMAN: Your Honor, part of the --

14 THE COURT: I know exactly what you are arguing about.
15 You can go ahead, but I am ahead of you I think.

16 MR. FRIEDMAN: You probably are.

17 In the complaint and in some of the declarations,
18 although I couldn't cite you to them right now, there are
19 references, criticisms of Mr. Donziger, his referral of
20 Mr. Cabrera as being independent. As my offer of proof, I
21 would like to propose that this was a common practice to refer
22 to all of these experts that had been approved by the court as
23 independent experts. That was a common practice of both
24 parties in Ecuador because of the reasons that Mr. Veiga has
25 told us.

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Veiga - cross

1 MR. MASTRO: Your Honor, in the context in which
2 Mr. Cabrera later served, he was not a joint inspection expert.
3 He was the court's single global damages assessment expert
4 obligated under court orders to be independent, impartial and
5 transparent in any dealings he had with any parties.

6 MR. FRIEDMAN: That would go to the weight.

7 THE COURT: The objection is sustained. This is an
8 attempt to compare a cart load of apples to a truckload of
9 oranges, and it's just not helpful. And the specific question,
10 which is as to whether it was common to refer to technical
11 consultants or experts nominated by parties in a judicial
12 inspection, where there were two partisan experts and a
13 settling expert, is entirely off the mark from the point I have
14 made already. Common where? To whom? In what time period?
15 What constitutes common? Those are rhetorical questions of
16 course.

17 MR. FRIEDMAN: So for my offer of proof, your Honor, I
18 would say that throughout the course of the litigation, both
19 parties commonly, frequently, regularly referred to any expert,
20 who had been approved by the court to provide expert reports or
21 opinion, as independent experts. And understanding your
22 ruling, I won't ask any more questions about that.

23 THE COURT: Let's go on.

24 BY MR. FRIEDMAN:

25 Q. Mr. Veiga, I wouldn't expect you to know the exact number

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1 necessarily, but could you give us the approximate number of
2 expert reports the Ecuador court had at the time it wrote its
3 verdict?

4 A. I don't have this in my mind. I'm sorry.

5 Q. Is it over 100?

6 MR. MASTRO: Objection.

7 THE COURT: Sir, you have got a 216,000 page record.
8 If you're interested, you can count instead of taking rank
9 speculation.

10 Q. Is it correct, Mr. Veiga, that Chevron filed recusal
11 motions on every judge in the Ecuador case except for Judge
12 Guerro?

13 MR. MASTRO: Objection. The record speaks for itself.

14 THE COURT: Sustained.

15 MR. FRIEDMAN: Then I would move into evidence the
16 entire record of the Ecuadorian proceedings.

17 THE COURT: I imagine we will get there before long.

18 Let's go along.

19 Q. Were you consulted about Chevron's decisions to file
20 recusal motions?

21 A. I participated in some discussions with counsel, yes.

22 Q. Are you aware of any judge that Chevron did not make a
23 recusal motion about?

24 MR. MASTRO: Objection, your Honor. It's
25 attorney-client that would only be in communications with

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1 counsel.

2 THE COURT: Sustained.

3 Q. Did Chevron place ads in Ecuadorian media outlets, such as
4 newspapers, magazines and television -- let me take it a step
5 at a time. Strike that question.

6 Let me ask it this way. Did Chevron place ads in
7 newspapers about this litigation in Ecuador?

8 A. Chevron did place press release and has placed open letters
9 that I remember setting the record straight with regard to the
10 true facts involved in the litigation.

11 Q. Some of those ads, for example, have the headline fraud of
12 the century? Do you recall that?

13 A. I don't recall specifically, but we did present evidence in
14 our belief that the Lago Agrio judgment was created with fraud.

15 Q. That was even before the verdict came out, is that right?

16 A. I don't remember exactly the dates, sir.

17 Q. Would you take a look at Defendants' Exhibit 764, please?

18 A. Which one?

19 Q. It's up on the screen, but I will hand you a copy as well.

20 Mr. Veiga, I see your name up at the top as somebody
21 who is on this e-mail trail. Do you see your name up there?

22 A. If you can give me just one second.

23 Yes, sir.

24 MR. FRIEDMAN: I would move for admission of 764.

25 THE COURT: Is there some reason why the version of

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1 764 that is on the disk containing the defendants' exhibits is
2 not the same document that is on the screen that we are
3 currently using? There may be substantial, partial or complete
4 overlap of text, but they are certainly not the same documents.
5 They are formatted differently. The number of pages is
6 different.

7 MR. FRIEDMAN: Yes. The short answer is I don't know,
8 your Honor.

9 THE COURT: Which deck of cards are we going to play
10 with?

11 MR. FRIEDMAN: I have got a paper original. The
12 witness has a paper original. I can give the Court a paper
13 original.

14 THE COURT: What is the source for this monitor?

15 MR. FRIEDMAN: I think it's the hard drive that we
16 gave you. If we can check with Mr. Taylor, maybe he has an
17 answer that I don't understand.

18 MR. MASTRO: Just to clarify, last night at 1 in the
19 morning we were sent by Mr. Donziger a completely new set of
20 their exhibits, some numbers changed, some content changed,
21 included dozens and dozens of crude clips for the first time,
22 out of the 600 hours of crude clips, and some of the numbers
23 changed and content. So, unfortunately, this might fall into
24 that category. But I plan to raise that with the Court at the
25 end of the day.

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1 THE COURT: Does anybody know?

2 MR. FRIEDMAN: Here is what I can tell you. I don't
3 know how helpful this is. Ms. Littlepage and I got involved in
4 this case a few weeks ago. What we discovered is that the
5 people working on behalf of Mr. Donziger had not done trial
6 work before, and they assumed that anything that had been put
7 attached as anywhere in the record ever in the history of this
8 case was part of the record and would be able to be considered
9 by the Court or the Court of Appeals. We caught that error,
10 and we have been trying to fix this situation ever since. And
11 so we have been working hard, pretty much every waking moment,
12 trying to get the exhibits into the kind of order that one
13 would expect in a trial like this. And all I can do is
14 apologize.

15 THE COURT: In this instance, we will go to the paper.
16 Provide me with the paper, please.

17 For the record, the paper version of the exhibit is
18 marked Defendants' Exhibit DX 764. It is four pages in length.
19 It bears numbering stamp CVX-IRCO-4908045 through 48. Let's
20 proceed.

21 MR. FRIEDMAN: I think I just moved this into evidence
22 when we left off.

23 MR. MASTRO: If I could just get clarification. On
24 what basis is it being offered for, impeachment, for truth of
25 the matters asserted in it?

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1 MR. FRIEDMAN: Yes. For the truth of the matter. I
2 can walk him through each of these people, but I think from the
3 e-mail addresses it looks like they are all Chevron people.

4 THE COURT: What is the point of it?

5 MR. FRIEDMAN: The point of it is that Chevron was
6 trying to reach the public with various ads, trying to reach
7 politicians with various ads. Again, the same sort of things,
8 without getting into argument, that Mr. Donziger and his people
9 were accused of doing.

10 THE COURT: Quickly, Mr. Mastro.

11 MR. MASTRO: They are not all Chevron people. Many of
12 them are from outside firms communicating with people within
13 Chevron. The portion where Mr. Veiga wants to rebut the lies
14 and the falsehoods that are coming from the other side, I don't
15 have any problem with that coming in. I am just pointing out
16 there are many parts of this that are potentially hearsay and
17 they are not from Chevron people. They are from outsiders.

18 THE COURT: They mainly don't have any content either.
19 Received.

20 (Defendant's Exhibit 764 received in evidence)

21 MR. FRIEDMAN: I will just do paper for the rest of
22 the day and then I will switch over.

23 THE COURT: Mr. Friedman, maybe we can make some real
24 progress. Is the point that Chevron ran ads in Ecuador putting
25 forth its view of the case, is that the point?

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1 MR. FRIEDMAN: Yes, your Honor.

2 THE COURT: So stipulated, Mr. Mastro?

3 MR. MASTRO: Yes, your Honor, to set the record
4 straight, absolutely. Chevron did that to set the record
5 straight.

6 THE COURT: Let's move on. It's stipulated.

7 MR. FRIEDMAN: Nevertheless, your Honor, I would just
8 like to get 798 into the record. It talks about the amounts of
9 money that Chevron was spending in that regard.

10 THE COURT: How is that relevant or material? It's
11 stipulated that they did it. What is the point?

12 MR. FRIEDMAN: I think the point is the extent to
13 which they did it. Three ads a week over a five week period,
14 etc., the magnitude of what they were doing.

15 THE COURT: What fact in issue does that make more or
16 less probable in this case?

17 MR. FRIEDMAN: It makes it more probable that Mr.
18 Donziger and his allies pushing back against that media barrage
19 was necessary and appropriate and not improper in any way. If
20 they will stipulate that what he did in pushing back against it
21 is not inappropriate, then we don't have an issue, but I don't
22 think they are going to do that.

23 MR. MASTRO: What we allege Mr. Donziger did was lie
24 to the press, to courts, to government regulators, etc.

25 THE COURT: Got it.

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1 What about that, Mr. Friedman?

2 MR. FRIEDMAN: There are two sides to this litigation,
3 your Honor. I understand there are plenty of press reports.
4 For example, I will just take one example to illustrate. Mr.
5 Donziger is accused of organizing demonstrations in Ecuador.
6 He would say to combat the barrage of public ads and other
7 things that Chevron did.

8 THE COURT: This is where I expected sooner or later
9 to get to today, and it is the notion that if your adversary is
10 active and aggressive and putting forward his position, you not
11 only may do what the adversary is lawfully doing, but you can
12 engage in other activities which are not, and the theory of it
13 is that the ends justify the means, and the problem is they
14 don't.

15 Now, if you as part of a defense here are offering to
16 prove that Chevron was out there telling untruths, pressuring
17 judges, whatever, within the limits of the rulings I have made,
18 that's fair game. If you're saying that because Chevron ran
19 ads in Ecuador, it was therefore appropriate for Mr. Donziger,
20 assuming the proof bears this out, to lie his head off in ads,
21 well, that's not getting you to first base. So let's move on.

22 MR. FRIEDMAN: To be clear, your Honor, we are not
23 arguing that the ends justify the means. But we are arguing
24 that many of the things that Chevron is accusing him of -- the
25 demonstrations, there is no argument, I don't think, that

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1 statements made in those demonstrations were untruths for
2 example. So he is combating ads that --

3 THE COURT: All I can do is deal with one thing at a
4 time. Right now we are on the subject of advertising. Chevron
5 stipulated they did advertise it. Now move on. We don't have
6 to have more proof that they did advertise.

7 MR. DONZIGER: Can I consult with Mr. Friedman for one
8 moment?

9 THE COURT: Fine.

10 Next question, please.

11 MR. FRIEDMAN: Yes, your Honor.

12 Q. Mr. Veiga, switching subjects, would it be correct that
13 towards the end of 2003, or early 2004, you on behalf of
14 Chevron approached the attorney general of Ecuador to talk
15 about this case, the Lago Agrio case?

16 A. Around that time, I did attend a meeting with the attorney
17 general of Ecuador. The subject of that meeting was basically
18 our views of the obligations in the Republic of Ecuador and
19 Petroecuador vis-a-vis the contracts, the agreements that they
20 signed, and the fact that we are being sued for the same claims
21 for which had been released.

22 Q. And you wanted the attorney general to issue an official
23 statement with respect to the litigation, is that correct?

24 A. We basically requested the attorney general to give us
25 assurance that the Republic of Ecuador would in fact honor the

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1 obligations that they assumed. We didn't ask any specific
2 thing that I remember from those initial meetings.

3 Q. Didn't you ask him to make an official statement or
4 stipulation that could be used to get the Lago Agrio court to
5 dismiss the case?

6 A. No, sir. The attorney general in one of the subsequent
7 meetings offered an officio, which is a binding opinion by the
8 Republic of Ecuador, establishing that TexPet and its
9 affiliated companies had indeed been released of any
10 environmental liabilities and that Petroecuador had assumed any
11 liabilities therefor. It was not to use specifically in the
12 Lago Agrio litigation, but he offered as an assurance that they
13 would honor those obligations.

14 Q. So I want to make sure we understand what you're saying.
15 He could issue an official statement. What is that called?

16 A. Officio.

17 Q. And that officio statement would have effect on the courts
18 in Ecuador?

19 A. I don't know that.

20 Q. Your hope was that if you got that officio statement, it
21 would cause the Lago Agrio litigation to be resolved, is that
22 correct?

23 MR. MASTRO: Objection, your Honor.

24 THE COURT: Overruled.

25 A. Our hope was that they would honor their obligations and

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1 justice will be made.

2 Q. And that the case would be resolved based on the attorney
3 general's officio?

4 A. The case would be resolved based on the facts and based on
5 and the facts that Petroecuador had assumed any remaining
6 obligations for environmental remediation there.

7 MR. FRIEDMAN: Can I have just a moment, your Honor?

8 THE COURT: Yes.

9 MR. FRIEDMAN: I wasn't sure of the procedure. What I
10 have done is marked for the record, although I would move it
11 into evidence, portions of this deposition.

12 Q. Mr. Veiga, if you would turn to, let's just go right to
13 page 238, if we could.

14 MR. MASTRO: This is not a 30(b)(6) in this case.

15 THE COURT: What?

16 MR. MASTRO: He is offering this --

17 THE COURT: He hasn't offered anything yet. He just
18 asked him to turn to page 238.

19 MR. MASTRO: That's fine, your Honor.

20 Q. Mr. Veiga, just for the record, this is a deposition you
21 gave on November 8, 2006, in the case of *Republic of Ecuador v.*
22 *Chevron Texaco Corporation, et al.*?

23 THE COURT: We are not doing that. We covered that,
24 remember, last week? It is what it is.

25 MR. FRIEDMAN: All right.

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1 THE COURT: Ask your question.

2 Q. If you go to page 238, Mr. Veiga, and feel free to read the
3 earlier parts as well, didn't you respond to questions about
4 the attorney general --

5 THE COURT: Page, line numbers. There was a
6 stenographer there. We know exactly what was asked and what
7 was responded. If you have a question, based on that, you can
8 ask it. But let's save all this time about the usual back and
9 forth about weren't you deposed, weren't you asked this,
10 weren't you asked that. Let's move on.

11 238, line?

12 MR. FRIEDMAN: Line 8 through 12.

13 Q. Didn't you testify that your hope was the officio from the
14 attorney general could be used to get the Lago Agrio court case
15 dismissed or resolved?

16 A. Page 238, line?

17 Q. 8 through 12.

18 A. I don't think those lines say that.

19 Q. How do you interpret those lines?

20 THE COURT: I think the first problem is you have
21 probably given him the wrong line numbers, Mr. Friedman. I
22 think you probably meant to indicate line 1 to line 12, which
23 puts a rather different spin on it.

24 MR. FRIEDMAN: Actually, even going back further, but
25 I wanted to get right to it.

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1 Q. Lines 1 through 12. Let's try that.

2 MR. MASTRO: I don't think this is proper impeachment
3 at all. His testimony on examination was about hoping to
4 resolve the case, and his answer here is ultimately to get that
5 resolved.

6 THE COURT: We are wasting a lot of time here.

7 This all starts off -- I shouldn't say starts off.
8 But the penultimate piece of testimony says, the attorney
9 general made a speech of his views. And the witness recounted
10 his recollection of what the attorney general said. And then
11 he was asked whether there was any further discussion or did
12 the meeting break up. And he went on for a little bit about
13 what happened after that. And then he was asked, so the
14 contemplation was thus and such. And he responded, the
15 stipulation could be used, which is all entirely consistent
16 with what he has said. And if you want to offer this at some
17 appropriate point, fine. But let's try to make a little
18 progress is.

19 MR. FRIEDMAN: What I would like to do is just offer
20 1302 as part of the record. I don't need to argue with anybody
21 about the meaning or any of that. I think the statement speaks
22 for itself.

23 THE COURT: Now, what have we got here, 20, 30 pages,
24 that you want to offer?

25 MR. FRIEDMAN: It starts at Bates number 2288783 and

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1 it ends at --

2 THE COURT: Did you designate this as part of your
3 deposition designations?

4 MR. FRIEDMAN: I don't believe so because we thought
5 he was coming live.

6 THE COURT: Yes, he is live. So you're entitled to
7 use it for impeachment, but it's not proper impeachment because
8 it's consistent with his testimony.

9 MR. MASTRO: Correct, your Honor.

10 MR. FRIEDMAN: I have a different view of whether it's
11 consistent, your Honor. I would just like it part of the
12 record.

13 THE COURT: Look, it's marked for identification.
14 It's part of the record. The bottom line of this is it is also
15 of no probative value here, at least not to this trier of fact.
16 So let's get on. It's an argument about choice of language, at
17 best.

18 BY MR. FRIEDMAN:

19 Q. Now, around this same time period, Mr. Veiga, that is late
20 2003, early 2004, you also approached the president of Ecuador
21 while he was in New York -- let me just stop there. You also
22 approached the president of Ecuador while he was in New York?

23 A. I didn't approach him. There was a conference sponsored by
24 Ecuador to promote several potential investors in companies who
25 were invited, and I attended this conference. It was basically

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1 the venue for this meeting.

2 Q. At that meeting with the president, you also discussed with
3 him the points you talked earlier about, Texaco's position
4 about how the earlier agreement should be honored?

5 A. Very briefly. There were specific meetings after the
6 conference, and it was a very brief meeting, in which we
7 introduced ourselves and we raised this concern that we had.

8 Q. The concern was that the Lago Agrio litigation was contrary
9 to the agreements the Republic of Ecuador had signed?

10 A. No. The concern was really that we needed to have
11 assurance that Petroecuador would honor the obligations that
12 they assumed, since they were the sole operator of the former
13 consortium fields, and the Republic of Ecuador would honor the
14 release that they granted.

15 Q. And that's because the claims that were being made by the
16 Lago Agrio plaintiffs you felt fell exactly within the
17 settlement agreements?

18 A. That's correct.

19 Q. And it was your hope that if the president of Ecuador would
20 honor those agreements in some way, it would end the Lago Agrio
21 litigation?

22 A. It was my hope.

23 THE COURT: What is the objection?

24 MR. MASTRO: Your Honor, he is using the subjective
25 voice again in formulation of the question.

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1 THE COURT: Overruled.

2 Please answer.

3 A. The hope was simple. We sign an agreement. We complied
4 with our portion of the bargain. We have been released of any
5 further environmental liabilities. The state oil company,
6 Petroecuador, continue to operate those fields. We have been
7 sued for claims that fall exactly within the scope of the
8 release, and we just want them to assure they will comply with
9 that bargain. I don't know in which way to comply. Hopefully,
10 they would do the remediation that they had and assume the
11 liabilities, if they exist, in whatever way they thought would
12 be appropriate. We never asked the Republic of Ecuador to
13 intervene in the case, but we comply with our portion of the
14 bargains, and we thought that they should comply with theirs.

15 Q. What did you want the Republic of Ecuador to do in response
16 to these communications?

17 A. In this meeting, we didn't ask anything specifically to the
18 president of the Republic. It was just a very brief meeting in
19 which we raised the issue and expressed our concerns.

20 Q. Let's just take this early time period of 2003, 2004. In
21 that time period, you personally and other Chevron people, to
22 your knowledge, had other contacts with the president and other
23 high government officials about the lawsuit, is that true?

24 MR. MASTRO: Objection to form. There are a lot of
25 parts and components, and this, and that.

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1 THE COURT: Sustained as to form. Break it down,
2 please.

3 Q. Did you have other contacts with high government officials,
4 besides the two we have just talked about, during the 2003-2004
5 time period?

6 A. I had some other meetings with government officials of
7 Ecuador.

8 Q. About the Lago Agrio case?

9 A. About the settlement agreements that we signed. When you
10 say the Lago Agrio litigation, the release is exactly for the
11 same claims. So, obviously, there is a relationship to the
12 claims that were made. But our primary objective was to get
13 assurance that they would honor the agreements that they
14 signed. It's a very reasonable expectation that any company
15 might have after complying with their portion of the bargain.

16 Q. What did you want these government officials to do to honor
17 their part of the bargain? What were you asking them to do?

18 MR. MASTRO: Asked and answered, your Honor, about
19 three or four times.

20 THE COURT: Sustained.

21 MR. FRIEDMAN: I don't think he has ever said what he
22 wanted them to do other than honor the agreement.

23 THE COURT: Apart from that, Mrs. Lincoln, how did you
24 like the show?

25 Move on, please.

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1 MR. FRIEDMAN: For my offer of proof, I would like to
2 state that --

3 THE COURT: The witness testified he never asked the
4 Republic of Ecuador to intervene in the case, and in addition,
5 he has answered this question a number of times.

6 MR. FRIEDMAN: He said that he wanted them to honor
7 the agreement, but he hasn't said what he wanted them to do.
8 That's what I am trying to find out. If he only gives one side
9 of the story and I can't cross-examine him about the other, I
10 have got a problem.

11 THE COURT: You have been cross-examining for a while.

12 Answer it once more, Mr. Veiga.

13 A. First of all, we wanted them to give assurance to us that
14 they would honor their obligations. Part of those obligations
15 had to do with Petroecuador assuming liabilities for any
16 remaining remediation of the sites, not including the scope of
17 work that we were responsible for. And the other one was for
18 the Republic of Ecuador to assume any liabilities based on the
19 release that they got.

20 Q. Did they ever agree to do either of those things?

21 A. In the contracts, yes.

22 Q. I mean in your conversations.

23 A. All these conversations were very vague. A lot of
24 background information -- thank you, we will think about or get
25 more information. No concrete result, which really prompt us

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1 to have to initiate arbitration against the Republic of
2 Ecuador.

3 Q. The attorney general that you spoke to in that conversation
4 that you referred to a few minutes ago, was that Attorney
5 General Borja?

6 A. Yes, sir.

7 Q. Did Chevron, to your knowledge, ever ask Attorney General
8 Borja to call Judge Guerra and ask him not to move the Lago
9 Agrio case forward?

10 A. Not to my knowledge.

11 Q. Was that something that you would have wanted Attorney
12 General Borja to do?

13 MR. MASTRO: Objection to form. He is asking him to
14 speculate on whether he wanted that done or not, when he never
15 said he wanted that done.

16 THE COURT: Sustained.

17 Q. Is it correct that Chevron hired a security firm to place
18 Mr. Donziger and other people associated with the plaintiff
19 side of the case under surveillance?

20 MR. MASTRO: Objection, your Honor. It calls for work
21 product, even if that were the case. But objection.

22 THE COURT: I think I have ruled on this, sir.

23 MR. FRIEDMAN: Yes, sir. I am unfamiliar with your
24 ruling. I'm sorry.

25 THE COURT: That it's protected by work product.

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1 If I am mistaken in that, I would like you to call it
2 to my attention.

3 We will take a short break right now and you can check
4 with your colleagues.

5 (Recess)

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1 THE COURT: Be seated, folks.

2 Okay. What is the objection?

3 MS. FRIEDMAN: I think where we left off, your Honor,
4 there was an objection on work product privilege, to me asking
5 questions about surveillance of the plaintiffs.

6 THE COURT: I think there was an objection. So let's
7 hear what the objection is.

8 MR. MASTRO: Yes, your Honor. It's a work product
9 objection and your Honor has already ruled on this and that's
10 document No. 1276 your Honor's order in which you said the
11 extent work is -- work product privilege extends to work
12 prepared by private investigator in anticipation --

13 THE COURT: Slow down, would you please, Mr. Mastro.

14 MR. MASTRO: So your Honor ruled already that work
15 product privilege extends to --

16 THE COURT: Would you get near a microphone. This is
17 very difficult.

18 MR. MASTRO: Sure. That's all I wanted to say, your
19 Honor.

20 THE COURT: But I didn't hear any of it.

21 MR. MASTRO: Your Honor, in document 1276 in your
22 Honor's order filed on June 28, 2013, you already ruled that
23 work product privilege extended to this subject matter, work
24 prepared by a private investigator in anticipation of
25 litigation, at least where the investigator is working at the

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1 direction of an attorney.

2 THE COURT: Do you mean 1276 or 1277?

3 MR. MASTRO: The docket number is 1276 that I'm
4 reading from, your Honor.

5 THE COURT: Okay.

6 MR. MASTRO: It's also a relevance issue, your Honor,
7 as to why that would be relevant, but it's a work product
8 privilege as well.

9 THE COURT: Okay. Mr. Friedman.

10 MS. FRIEDMAN: Your Honor, here's my understanding of
11 the situation, but I'd be the first to defer to anybody else.
12 But my understanding is the Court made a ruling that we could
13 not get the substance of what the reports, for example, of the
14 surveillance company, but that during depositions we were
15 allowed by the magistrate or, I'm sorry, the special master to
16 ask some questions about the extent of the surveillance and
17 things like that.

18 So I think my impression is the special master took
19 your ruling and applied it to discovery and so we do know some
20 things from those depositions that came in over objection by
21 the special master's rulings.

22 THE COURT: And what about relevance?

23 MS. FRIEDMAN: The relevance, your Honor, is once
24 again the part of the allegations against the plaintiff is all
25 of the pressure they applied to Chevron personnel. And this is

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1 not an ends justify the means argument, your Honor, but it's a
2 what's going on is not improper. If it's not improper for them
3 to do -- and I won't recite the facts because you haven't ruled
4 on it yet. But it's not improper for them to do these things,
5 it's not improper for us to have some somebody watching them
6 or, you know, similarly keeping track of what they're doing.

7 So it's -- what I think Chevron is asking is that you
8 hear one half of what happened in Ecuador and not hear the
9 other half.

10 MR. MASTRO: Your Honor, there's no allegation in our
11 case that whether or not Mr. Donziger or the Lago Agrio
12 plaintiffs have an investigator that that's part of our
13 substantive claims.

14 And, your Honor, just to set the record straight
15 because I was at many of these depositions, Special Master Katz
16 shut down this line of questioning immediately in the Rivero
17 deposition. Special Master Gitter allowed limited questioning
18 and then shut it down at the Carson deposition.

19 THE COURT: Well, for the moment I'm going to sustain
20 the objection, subject to allowing both sides to go back and
21 call to my attention anything else in the record that may
22 indicate a different result.

23 On the issue of relevance, my recollection is that
24 there's no contention by Chevron that any part of the allegedly
25 extortionate behavior consisted of doing surveillance on any

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1 Chevron personnel. I simply don't remember that in the
2 complaint or anywhere else and so I don't see what else it
3 could possibly be relevant to, if that.

4 Now, there was an awful lot of pretrial litigation
5 over discovery with respect to surveillance activities or
6 alleged surveillance activities. My best recollection, and as
7 much as I've been able to check in the brief period since we
8 took the recess, none of that effort by the defendants to get
9 into that subject was based on the argument that's now
10 advanced. There were all sorts of other arguments, but none
11 based on that. And there were several rulings both by the
12 magistrate, by the special masters and by me and I think by
13 Judge Francis.

14 So for now we're not going into this. You're all
15 welcome to brief this or simply to give me any materials you
16 consider relevant by 8:30 tomorrow morning, and then we'll see
17 whether there's any basis to change the ruling.

18 I'm frank to say with a record of over 1,500 filings,
19 I can't always remember instantly each and every one of them
20 though I try. So that's where we are at the moment.

21 MS. FRIEDMAN: Thank you, your Honor.

22 BY MS. FRIEDMAN:

23 Q. Mr. Veiga, I'm going to ask to you look at Exhibit 780.

24 THE COURT: Plaintiff or defendant's?

25 MS. FRIEDMAN: I'm sorry, Defendant's Exhibit 780.

DAFLCHE7

Veiga - cross

1 THE COURT: I would also, Mr. Friedman, before just
2 leaving that subject entirely, specifically invite your
3 attention to the opinion filed June 28 in which I went to quite
4 I thought great extent to recognize an argument that could have
5 been made but wasn't really by your clients, recognize it, and
6 do an in camera inspection of documents to make sure there
7 wasn't anything in there that was pertinent to the point
8 that --

9 MS. FRIEDMAN: Understood.

10 THE COURT: -- might well have been argued or argued
11 better. Anyhow, I'm aware of the issue and there we are.

12 Next.

13 Q. Yes. Mr. Veiga, could you tell us who Sam Singer is?

14 A. I believe that Mr. Singer is a contractor for Chevron.

15 Q. And in what area does he contract?

16 A. Public relations.

17 Q. And who is Kent Robertson?

18 A. Kent Robertson is one of Chevron employees in the public
19 relations department.

20 Q. So Sam Singer provides advice to Chevron regarding public
21 relations?

22 A. He does provide recommendations.

23 Q. And I guess Kent Robertson implements, if he thinks
24 appropriate, those recommendations?

25 A. I'm not sure.

DAFLCHE7

Veiga - cross

1 MR. MASTRO: Objection, calls for speculation.

2 MS. FRIEDMAN: Your Honor, I'd move for admission of
3 780, Defendant's Exhibit 780.

4 MR. MASTRO: Objection, your Honor. This is from
5 outside consultant. Mr. Veiga is not on the document. It's
6 not any sort of admission or statement by Chevron, so we object
7 to it on hearsay grounds, also on relevance grounds.

8 MS. FRIEDMAN: Your Honor, the testimony is that
9 Mr. Singer is an outside consultant who is hired by Chevron to
10 give advice on public relations. This is within the scope of
11 his assignment under 801(d)(2)(D). He's an agent of a party
12 for purposes of working on public relations issues.

13 THE COURT: What's the relevance?

14 MS. FRIEDMAN: Well --

15 THE COURT: I'm sure there's a contractor who stocks
16 the paper towels in the rest rooms and probably has written
17 memos. What's it got to do with anything?

18 MS. FRIEDMAN: Well, for one thing, your Honor, you
19 earlier told us that if we could show that -- well, let me just
20 go back. I don't want to -- let me say it this way.

21 The messages and themes on the second page include
22 trying to paint Mr. Donziger -- this is towards the middle of
23 the page, your Honor -- Steven Donziger, the most powerful man
24 in Ecuador, how one American attorney is pulling the strings of
25 an emerging banana republic in Ecuador. Up above that, couple

DAFLCHE7

Veiga - cross

1 bullet points, Ecuador, the next major threat to America.

2 This is the pushback. Both sides have accused the
3 others of intimidation, misstatements. I think we could all
4 agree, if nothing else, Mr. Donziger is not the most powerful
5 man in Ecuador.

6 There are a variety of things here that Chevron was
7 intent on communicating a message. People can differ on
8 whether that message is accurate or not, but it goes back to
9 the point of what he's pushing back against. You know, they
10 haven't just said, your Honor, he bribed a judge, hold him
11 responsible for that. They said he's had demonstrations, he's
12 talked to people, he's given speeches he took out ads. They
13 have put all of that into their complaint and into their
14 paperwork. And to look at what he does in a vacuum and not see
15 what he was addressing is we would say inappropriate.

16 MR. MASTRO: Your Honor, this is an outside contractor
17 who Mr. Veiga said would make recommendations. And he's trying
18 to take those out of context, rank hearsay. And, your Honor,
19 in this trial we will prove that Mr. Donziger was pretty darn
20 powerful in Ecuador with what he did and the friends he had in
21 the Carega.

22 But, your Honor, that's not the point. This is
23 irrelevant. It doesn't belong in here. And it's certainly not
24 attributable to Chevron that some outside consultant made
25 recommendations.

DAFLCHE7

Veiga - cross

1 MS. FRIEDMAN: I'm hoping to offer as the trial goes
2 on evidence that they followed through on these
3 recommendations, many of them.

4 THE COURT: So what?

5 MS. FRIEDMAN: Well, your Honor, we don't have a jury
6 here. You're going to weigh what you think is appropriate as
7 you think it's appropriate. I am urging the Court to look at
8 both sides of the story. That's what I'm doing.

9 THE COURT: That's what I've been doing from day one.

10 MS. FRIEDMAN: I believe that. And so I would ask you
11 to admit this exhibit so you can weigh this as well.

12 THE COURT: I will receive this exhibit.

13 (Defendant's Exhibit 780 received in evidence)

14 THE COURT: But really if I get the idea that this is
15 really being done essentially to run the clock, my attitude
16 toward this is going to change. I'm telling you right now it's
17 not helpful. You heard the openings. You know what their case
18 is.

19 They are not suing you for running ads in and of
20 itself; they're not. They're not suing you for having a PR
21 strategy in and of itself; they're not. They're not suing you
22 for litigating a lawsuit in and of itself; they're not. And as
23 soon as we understand what the issue is, we will much more
24 swiftly get to the real issues in this case, which I hope will
25 happen. So let's move along.

DAFLCHE7

Veiga - cross

1 MS. FRIEDMAN: I'm trying.

2 THE COURT: I know you're trying.

3 MS. FRIEDMAN: And, your Honor, on the running down
4 the clock thing, your Honor, I am not trying to run down the
5 clock. I am not as organized as I ordinarily am in court and I
6 apologize for that.

7 THE COURT: I understand. We're off to a perfectly
8 good start, you and I. I understand. I really mean it. Let's
9 go ahead. I appreciate your attitude, very professional.
10 Let's get on.

11 MS. FRIEDMAN: Thank you, your Honor.

12 THE COURT: Okay. So it's in evidence. Do we have
13 any more questions?

14 MS. FRIEDMAN: It's in evidence. I'll move on, your
15 Honor.

16 THE COURT: Thank you.

17 MS. FRIEDMAN: If I could have exhibit, Defendant's
18 Exhibit 685. Bates 4875276.

19 (Pause)

20 MS. FRIEDMAN: Your Honor, for the record, Mr. Mastro
21 wants me to read in 780 was CDX RICO 4746090.

22 THE COURT: I'm sorry. Again, please? I understand.
23 I got it.

24 MS. FRIEDMAN: And Defendant's Exhibit 685 is CDX RICO
25 4875276.

DAFLCHE7

Veiga - cross

1 THE COURT: Through 79.

2 MS. FRIEDMAN: Yes. I'm just going to give the first
3 page if that's okay. Frankly, don't really understand why I'm
4 doing that.

5 THE COURT: Well, because there's some issue as to
6 what the exhibits actually are. So it's well to be.

7 MS. FRIEDMAN: So, yes, it would be through 279.

8 THE COURT: Let's go ahead.

9 BY MS. FRIEDMAN:

10 Q. Mr. Veiga, I apologize if I asked you this before, William
11 T. Irwin, could you tell us who he is?

12 A. William Irwin is an employee of Chevron in the public
13 affairs department in Washington, D.C.

14 Q. All right. And you told us who Mr. Cadez is.

15 MS. FRIEDMAN: Your Honor, I'd move for admission of
16 685.

17 MR. MASTRO: Your Honor, this is the same objection.
18 Mr. Cadez --

19 THE COURT: Same ruling.

20 MS. FRIEDMAN: Thank you, your Honor.

21 If I could have Defendant's Exhibit 626.

22 Your Honor, I'm going to pass on that exhibit because
23 we only have a Spanish version of it.

24 And I will move on to Exhibit 585, Defendant's
25 Exhibit 585, which is -- does not have a Bates number.

DAFLCHE7

Veiga - cross

1 Q. And, Mr. Veiga, this 585, let me ask it this way because
2 I'm not seeking to produce the exhibit.

3 At some point did you become aware that Chevron had
4 offered a journalist some money, \$20,000, to go and pretend to
5 be doing a story about the Ecuadorian case for the plaintiffs
6 in the hopes of gaining information for Chevron?

7 A. I have no personal knowledge of that.

8 Q. At some point did you become aware of that incident?

9 MR. MASTRO: Objection.

10 Q. Was it reported to you?

11 MR. MASTRO: Objection, your Honor. He has no
12 personal knowledge of how.

13 THE COURT: He certainly has personal knowledge of
14 whether it was reported to him.

15 THE WITNESS: The subject was discussed through
16 counsel with me.

17 Q. All right. And let me ask did -- I don't want to know the
18 substance of anything, but did you have supervisory or contact
19 with Kroll, the security firm Kroll?

20 A. Not at all.

21 Q. Who was responsible for interacting with Kroll on the legal
22 team of Chevron?

23 A. Outside counsel.

24 Q. And in this case who would that have been?

25 MR. MASTRO: Objection, relevance, your Honor.

DAFLCHE7

Veiga - cross

1 THE COURT: Overruled.

2 A. I believe Gibson Dunn.

3 Q. Okay. And during your day-to-day supervision of the case,
4 did you become aware of a man by the name of Diego Borja?

5 A. Yes.

6 Q. And did you ever meet him personally?

7 A. I think I met Mr. Diego Borja a couple occasions casually.

8 Q. And is it true that he had worked for TexPet, Texaco, or
9 Chevron for a number of years?

10 MR. MASTRO: Objection to form and attorney-client
11 privilege and work product. To the extent he has any knowledge
12 in this area, it hasn't been established that he has any
13 personal knowledge of this area at all.

14 THE COURT: You're going to have to take baby steps,
15 Mr. Friedman.

16 MS. FRIEDMAN: I will.

17 Q. Did you become aware of -- in your day-to-day supervision
18 of the litigation, did you become aware that Mr. Borja was
19 closely connected with companies that were doing laboratory
20 analysis of samples in the litigation?

21 MR. MASTRO: Again, your Honor, same objection. The
22 witness shouldn't get into anything that he only knows because
23 of communications with counsel.

24 THE COURT: Subject to that limitation, please answer.

25 THE WITNESS: I'm not sure I understand your question.

DAFLCHE7

Veiga - cross

1 What do you mean by closely connected?

2 Q. Well, did he own or have an ownership interest in Inter
3 Intell G S.A.?

4 A. My understanding is that Mr. Diego Borja was an employee of
5 STL Laboratories and then he had his own firm. I'm not sure if
6 this is his firm or not.

7 Q. All right. And his own firm, did his own firm do
8 laboratory work for Chevron in the underlying case?

9 A. Again, I don't have specific personal knowledge of that.
10 My understanding is that the only service that he did was
11 really to phase out a laboratory, basically dispose of
12 laboratory equipment, and this is just the limitation of my
13 understanding.

14 Q. Okay. Is it true that he also transported laboratory
15 samples from the field to Chevron's laboratories?

16 A. I don't know if he did it personally. I know that STL did.

17 Q. Is it true that Chevron eventually began paying Mr. Borja
18 10,000 per month approximately in return for being a witness in
19 this case?

20 MR. MASTRO: Objection, your Honor, and again haven't
21 established the foundation.

22 THE COURT: I can't hear you, Mr. Mastro.

23 MR. MASTRO: I'm objecting, your Honor, and this
24 witness, there has not been a foundation established as to
25 whether he knows that from communications with counsel or

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Veiga - cross

1 whether he knows it by personal knowledge, each of these
2 questions as we get deeper into this. I want to make sure the
3 witness knows there is a standing objection to attorney client
4 communications.

5 THE COURT: Mr. Friedman, I think you need to phrase
6 your questions with precision.

7 MS. FRIEDMAN: I'll do my best, your Honor.

8 Q. Is Chevron paying a monthly payment to Mr. Borja at
9 present?

10 A. I'm not sure of the current situation of Mr. Borja.

11 Q. Are you aware that Chevron was paying Mr. Borja a monthly
12 payment during some period of time?

13 MR. MASTRO: Objection, your Honor, again, same basis.
14 We don't know what his knowledge is based on and whether it's
15 only from attorneys and attorney client communication.

16 MS. FRIEDMAN: Your Honor, part of the problem here is
17 we have information from discovery and from tape recordings
18 that were made with Mr. Borja. I'm sure you're familiar with
19 all this.

20 THE COURT: You would not be correct.

21 MS. FRIEDMAN: All right. I'm just delighted I know
22 something you don't.

23 THE COURT: More than that, I'm sure.

24 MS. FRIEDMAN: I'm trying to argue this in a neutral
25 way, your Honor. If Chevron is paying a witness in this case

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Veiga - cross

1 money and other things for their testimony, I don't think that
2 would be covered by the attorney-client privilege even if an
3 attorney is the one who puts that together.

4 THE COURT: If Chevron calls the witness, wouldn't the
5 logical way to deal with it be to ask the witness?

6 MS. FRIEDMAN: Well, the problem, your Honor -- that
7 would be one logical way to deal with it, for sure. But the
8 problem is, A, they may not call the witness.

9 THE COURT: Then it's not a concern, is it?

10 MS. FRIEDMAN: Well, it would be because the facts
11 surrounding, as I said in opening, your Honor, it was Mr. Borja
12 who approached Judge Munoz and tried to bribe him. And as a
13 result of that interaction -- I won't go into all the details,
14 but I can if you want -- as a result of that interaction,
15 Chevron took out ads that were false that said Judge Munoz had
16 accepted a bribe, they had evidence of bribes, etc., etc., when
17 in fact to my knowledge at least one, and I think it's more,
18 federal judges actually looked at the tapes and said there's no
19 evidence of bribing here at all.

20 So we've got Chevron -- and that's why Mr. Borja's
21 relationship with Chevron is so important as well. We've got
22 them going into this judge recording, offering him a bribe, or
23 trying to offer him a bribe. Ultimately, he doesn't take the
24 bribe, but they use that as an excuse to knock the judge off
25 the case, slowing things down yet again, and take out ads

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Veiga - cross

1 saying this is proof of how corrupt the Ecuador legal system
2 is.

3 Then they take Mr. Borja, fly him out of the country
4 with his family, I believe, and at one point in time were
5 paying him a pretty healthy stipend, different things in the
6 record, either 6,000 or 10,000 a month, got him a house in
7 California in a gated community with a swimming pool on the
8 side of a golf course, gave him an SUV, gave his wife a job.

9 So it's relevant for many, many issues in this case,
10 and I don't see the attorney-client privilege.

11 THE COURT: It's relevant for what issues in this
12 case?

13 MS. FRIEDMAN: Well, it's relevant to Chevron's claims
14 that the Ecuadorian legal system is corrupt because in fact the
15 person turns down the bribe.

16 THE COURT: So, in other words, it's probative of the
17 rectitude or lack thereof of the Ecuador system if on one
18 occasion one judge declined a bribe. If that's the argument,
19 we're not going with it.

20 Next point.

21 MS. FRIEDMAN: All right. Fair enough.

22 The other thing, your Honor, is it is relevant to
23 Chevron's clean hands or lack of clean hands and that one is
24 obvious and maybe I'll just stop there. That's probably our
25 strongest argument.

DAFLCHE7

Veiga - cross

1 I think it's also relevant to sort of the sequence of
2 events that occurred in this process because what you're going
3 to hear in the outtakes that you haven't heard yet are that --

4 THE COURT: You're making a big assumption there.

5 MS. FRIEDMAN: Well, let me say this. There's going
6 to be testimony to the effect that the plaintiff lawyers in
7 Ecuador were very concerned that Chevron was doing everything
8 it could to disrupt the proceedings. I understand there's
9 another side to that, but I'm telling you our side of that
10 which is that Chevron was doing everything it could to disrupt
11 the proceedings, including attempting to bribe a judge that
12 ultimately resulted in his recusal and another judge having to
13 come in. So that's the packet of information. If it's true, I
14 don't think an attorney-client privilege should stand in the
15 way of the Court hearing that evidence.

16 THE COURT: Mr. Mastro.

17 MR. MASTRO: Thank you, your Honor, because I have to
18 respond briefly. This witness already said he has no personal
19 knowledge. Mr. Borja was a 1782 witness who denied under oath
20 that Chevron had any idea he was making the tapes he was making
21 at the time he made them. They haven't designated from his.

22 THE COURT: I'm sorry?

23 MR. MASTRO: They haven't designated from his
24 deposition to put any of that evidence in here. Your Honor, he
25 has so misstated the facts of what happened in that situation,

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Veiga - cross

1 they neither show an innocent judge nor an innocent government
2 official from the political party of President Correa who
3 solicits a \$3 million bribe -- 1 million for the president's
4 office, 1 million for the judge, and 1 million for the
5 plaintiff's side of the case. And then the judge meets
6 privately in a Holiday Inn several times with Mr. Borja to tell
7 him this is what the tapes would show -- they're on their
8 list -- to tell him, yes, Chevron, there's going to be a
9 judgment again Chevron and there will be remediation work for
10 you. That's what they say is refusing a bribe. It's those
11 tapes that Mr. Borja made without Chevron's knowledge. That's
12 what their own special counsel told them after he had reviewed
13 the situation.

14 THE COURT: I'm sorry, whose only special counsel?

15 MR. MASTRO: Donziger and the plaintiff's side hired
16 special counsel, Aton Goldman, you may remember him from the
17 U.S. Attorney's Office here, who wrote to them it appears what
18 Chevron is saying is absolutely true based on our review. They
19 didn't know Borja was doing that. But what Borja found out was
20 not an innocent judge. He found out there were bribes
21 solicited.

22 That's not the point, your Honor. This is not --

23 THE COURT: No, it's not.

24 MR. MASTRO: This is neither unclean hands, nor does
25 it show anything about the Ecuadorian judiciary that reflects

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Veiga - cross

1 well on the Ecuadorian judiciary. It should be irrelevant to
2 this case.

3 THE COURT: Well, the very first question in my mind
4 is this. There is a pleaded affirmative defense of unclean
5 hands. And in Salazar I have ruled on what about that defense
6 was sufficient and what wasn't. And you have a pending motion
7 before me to apply, in effect, to apply that ruling here, which
8 will be decided swiftly. And if need be, I'll decide this
9 piece of it now or in the morning.

10 My question is was this pleaded in that defense and
11 what was my previous ruling about it? It was a while ago.

12 MS. FRIEDMAN: Can I have a minute, your Honor?

13 THE COURT: Please.

14 MR. MASTRO: Your Honor, my recollection is that your
15 Honor allowed limited discovery on this issue and the limited
16 discovery proves not only that Chevron didn't know what Borja
17 was doing but that --

18 THE COURT: It's not the right question. The question
19 is what my ruling was on what's in and out of the case.
20 Discovery comes later.

21 MR. MASTRO: Right. I understood, your Honor, on the
22 affirmative defense, you specified a small number of categories
23 where they could -- that would continue to remain in the case
24 for purposes of discovery. We believe that what we understood
25 your Honor's ruling to be after that was done that your Honor

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Veiga - cross

1 would revisit whether it had any relevance to the case any
2 longer based on what that discovery showed because that
3 discovery shows --

4 THE COURT: But I'm not talking about discovery now.

5 MR. MASTRO: I understand, your Honor.

6 MS. FRIEDMAN: Your Honor, Ms. Littlepage informs me
7 that she read the order recently and believes that it says that
8 it was pled, Borja is in. But both of us are kind of fuzzy
9 right now, but that's our understanding of the record.

10 THE COURT: All right. Let's leave this issue until
11 the morning.

12 MS. FRIEDMAN: All right.

13 THE COURT: Give me an idea of how much more you have.

14 MS. FRIEDMAN: Give me just a second, your Honor.

15 MR. MASTRO: We were very much hoping to finish with
16 Mr. Veiga today.

17 THE COURT: I'm sure you were. So was I.

18 MR. MASTRO: Thank you, your Honor.

19 THE COURT: Only Mr. Gomez is happy.

20 MS. FRIEDMAN: Your Honor, I think I have if I were to
21 just ask my questions and --

22 THE COURT: I understand.

23 MS. FRIEDMAN: I would say --

24 THE COURT: I'm trying early on to fully understand
25 both parties' positions on all these issues. But it's going to

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Veiga - cross

1 move faster as we get more educated.

2 MS. FRIEDMAN: It always does. Your Honor, I think I
3 probably have about an hour more.

4 THE COURT: All right. Let's go on and see what
5 progress we can make now.

6 MS. FRIEDMAN: Thank you.

7 BY MS. FRIEDMAN:

8 Q. Mr. Veiga, I'm switching topics now.

9 Were you aware that before the verdict by Judge
10 Zambrano, Mr. Guerra had approached Chevron about obtaining
11 money from Chevron for helping to fix the case?

12 MR. MASTRO: Objection, your Honor. Same issue. He
13 only knows it through counsel and it's attorney-client
14 privilege. Foundation and privilege issues.

15 MS. FRIEDMAN: I would say, your Honor, if a lawyer
16 learns that somebody, a judge or a former judge, is approaching
17 to fix a case, that would be outside the attorney-client
18 privilege.

19 THE COURT: Really? On what theory would that be?

20 MS. FRIEDMAN: Crime fraud.

21 MR. MASTRO: The witnesses will testify we turned down
22 as opposed to them. Anyway, that's crime fraud.

23 THE COURT: Well, no.

24 MS. FRIEDMAN: Your Honor, the integrity of the
25 proceedings in Ecuador were of substantial concern to both

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Veiga - cross

1 sides. If Chevron, if Chevron gets repeated solicitations from
2 their star witness to fix the case, I would say that's highly
3 relevant both to unclean hands --

4 THE COURT: You've already got an affidavit from the
5 man who was approached who is going to be a witness here. So
6 why are we wasting time with this?

7 MS. FRIEDMAN: Well, he was approached by Guerra, but
8 Guerra approached Chevron and Chevron's action --

9 THE COURT: The way Guerra approached Chevron, if I
10 understand the evidence, is he went to Callejas. Right?

11 MS. FRIEDMAN: I'm sorry, your Honor.

12 THE COURT: Do I have the name right?

13 MR. MASTRO: He went to Racines, his partner. It was
14 Liliana Suarez, Judge Zambrano's sort of law clerk, secretary,
15 and companion.

16 THE COURT: Whatever it is, there is direct testimony
17 coming in from the person whom Guerra admits having approached
18 that in fact he approached him. Okay. That means whatever it
19 means. Why are we asking the in-house lawyer for the company
20 about it?

21 MS. FRIEDMAN: It goes to the credibility of Chevron's
22 position in this case, your Honor, that when they approached --
23 when he was approached, when Mr. Guerra approached the Chevron
24 people, they didn't try to tape him. They didn't report him to
25 the authorities like had occurred with the Borja incident with

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Veiga - cross

1 Judge Munoz. Instead, they sat on it. And several years later
2 he becomes their star witness after he admits that he had
3 several other approaches to Chevron.

4 THE COURT: And all of that you know because Chevron
5 has put it on the record, right?

6 MS. FRIEDMAN: Well, we know --

7 THE COURT: All of it, each and every bit.

8 MS. FRIEDMAN: Well, Mr. Guerra's story keeps changing
9 and we've never heard -- well, I can't say what we've never
10 heard. I don't believe we've heard Chevron's version, a
11 decision-maker at Chevron saying what they did and why they did
12 it at various times.

13 THE COURT: And that would be relevant why?

14 MS. FRIEDMAN: Well, starting with unclean hands, it
15 would be relevant to that. Starting to the credibility of
16 Mr. Guerra's --

17 THE COURT: Why, why? I do understand that every now
18 and then the argument is put forward that anything that --
19 well, I'm not going to put it that way. Just it's like an
20 incantation, right. But I'm not following the logic.

21 MS. FRIEDMAN: Here would be the logic. Let's take a
22 hypothetical. Mr. Donziger bribed the judge and at the same
23 time Chevron was bribing judges. Same time, same case, they're
24 bribing judges. Are they allowed to come into a court of
25 equity and ask that equity be done? I think the answer is

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Veiga - cross

1 pretty clear that they're not.

2 THE COURT: And that fits this scenario how? Somebody
3 is shaking them down. They don't say okay, we'll pay. They
4 say, no, we won't pay. And you're accusing them of unclean
5 hands for the crime of not paying the bribe.

6 MS. FRIEDMAN: Well, here's the problem, your Honor.
7 They're very selective about when they pay and when they don't
8 pay. When Mr. Borja did what he did, they were happy to tape
9 it and publicize it and, from our perspective, twist it out of
10 reality to get advantage in the case and in the public.

11 THE COURT: And subject to whatever rulings I've made
12 on that subject, you may be permitted to prove all of that.

13 MS. FRIEDMAN: Here's the circumstantial evidence,
14 your Honor. If that's true --

15 THE COURT: I'm sorry, here's the circumstantial
16 evidence? This is going to prove what happened with Borja?

17 MS. FRIEDMAN: No. What I'm saying is there's more
18 than one piece to this puzzle. And the other piece is so why
19 didn't they tape Guerra? Supposedly from their statements
20 about Borja, they're saying we're very concerned about the
21 integrity of the system and so on and so forth and that's why
22 we taped and that's why we're doing this stuff. That's why
23 we're getting him out of the country, to protect him.

24 Now, they're also approached by Guerra. So we've got
25 Judge Munoz who we say did not take a bribe and they're

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Veiga - cross

1 reacting in one way. Then we've got Guerra who says he
2 approached them and I guess they agree he approached them.

3 THE COURT: That's how we all know it, because they've
4 disclosed it.

5 MR. MASTRO: Correct.

6 MS. FRIEDMAN: Well, I can't -- I'm not sure how it
7 first came out.

8 But my point is not that. My point is the disparity
9 in treatment between how they treated the Borja incident in
10 which Judge Munoz says I won't take a bribe, taping,
11 publicizing it and so on and trying to twist it out of
12 proportion, compared to the Guerra incident where ultimately he
13 does take -- I'm not going to characterize it as a bribe. He
14 does take money from Chevron in order to impeach the verdict.

15 MR. MASTRO: Your Honor, may I please be heard briefly
16 on this?

17 THE COURT: Yes.

18 MR. MASTRO: Your Honor, there isn't a shred of
19 evidence in this record of Chevron doing anything other than
20 refusing any overtures on a bribe.

21 And, your Honor, the Borja situation has nothing to do
22 with Zambrano situation. Borja comes forward with this
23 evidence of private meetings with the judge and a political
24 party official of Correa's, political party official of
25 Correa's having solicited a bribe and Chevron makes that known.

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Veiga - cross

1 Chevron makes known that it was solicited for bribes in the
2 Zambrano era. Chevron has done nothing wrong, there's no
3 unclean hands.

4 Certainly this witness is not the one to ask these
5 questions of.

6 THE COURT: Look that last point is the ultimate point
7 in this discussion. We'll see whether the Borja incident comes
8 in, and if it comes in, we'll see what the evidence is. And
9 you are going to have the witness who says he was approached by
10 or on behalf of Guerra allegedly acting on behalf of Zambrano.
11 And you will have the people with personal knowledge of what
12 happened and we'll see what the evidence is.

13 I don't see any justification for trying to do this by
14 starting in the general counsel's office and working back down
15 the chain. We're just not going to do it that way.

16 MS. FRIEDMAN: And just so you understand why I was
17 doing it this way, your Honor, he is the first witness.

18 THE COURT: I understand, but, you know, you can't
19 prove the whole case with the first witness.

20 MS. FRIEDMAN: Understood.

21 THE COURT: Supposedly they call a document custodian.

22 MS. FRIEDMAN: I suppose there's a lot of documents to
23 ask him about.

24 THE COURT: You can be sure they'll try not to.

25 MS. FRIEDMAN: I'll move on, your Honor.

DAFLCHE7

Veiga - cross

1 THE COURT: Well, look, it's 25 after four. We'll
2 break until tomorrow morning at 9:30 and because I think
3 continuity is pretty much shot at the moment.

4 But let's see if we can't make more headway tomorrow.
5 Please.

6 Is there anything that must be done before we break
7 tonight?

8 MR. MASTRO: Well, your Honor, we have the timelines
9 for you that your Honor requested. Happy to hand those up.

10 THE COURT: You've given them to the other side,
11 right?

12 MR. MASTRO: We're going to give to everybody right
13 now.

14 THE COURT: Okay.

15 MR. MASTRO: And we can deal with --

16 THE COURT: No problem with that, Mr. Friedman?

17 MS. FRIEDMAN: No.

18 THE COURT: Mr. Gomez?

19 MR. GOMEZ: No, your Honor.

20 MS. FRIEDMAN: I have to see them first, but no
21 problem with the process.

22 MR. MASTRO: And your Honor --

23 THE COURT: Do you want to see them before they're
24 passed to me?

25 MS. FRIEDMAN: No, no, no.

DAFLCHE7

Veiga - cross

1 MS. LITTLEPAGE: Judge, may I raise one issue. I
2 haven't spoken yet.

3 We had filed a motion for pro hac admission of my
4 partner Rain Booth. He has been working on one of the
5 witnesses we expect to come tomorrow. So I'm just asking the
6 Court if we could expect a ruling on his pro hac, whether one
7 of us has to take over the witness.

8 THE COURT: Nobody is going to have to take over the
9 witness, regardless of whether I get to the paperwork, unless
10 there's something unusual in the paperwork that's going to give
11 me a problem, is there?

12 MS. LITTLEPAGE: I don't think there is, no.

13 MR. MASTRO: And, your Honor, that witness I believe
14 is Christopher Bogart, is that who?

15 MS. FRIEDMAN: No.

16 MR. MASTRO: Nobody has told us how long they expect
17 Mr. Bogart to be cross-examined.

18 MS. FRIEDMAN: He will be much shorter. I'm going to
19 say an hour in cross.

20 THE COURT: All right.

21 MR. MASTRO: Very good. Your Honor, the issue of
22 confidentiality and the defendant's witness list still being
23 over 70 witnesses, we don't have to address that now, but
24 perhaps we can do it first thing in the morning.

25 THE COURT: Perhaps we can do it in the morning.

DAFLCHE7

Veiga - cross

1 MR. MASTRO: Thank you, your Honor.

2 THE COURT: Or afternoon. We'll see.

3 MR. MASTRO: Just handing up Exhibit 3000A, which is
4 the list of the exhibits associated with Mr. Veiga.

5 THE COURT: Give it to my law clerk sitting in the
6 jury box.

7 Thank you, folks.

8 MR. MASTRO: Thank you very much, your Honor.

9 (Adjourned to October 16, 2013, at 9:30 a.m.)

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300065

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DEFENDANT EXHIBITS

Exhibit No. Received

668101

764115

780137